INCOME TAX SERVICE
1919

FROM THE RECORDS OF

The Corporation Trust Company

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THE CORPORATION TRUST COMPANY

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The Communication

Supplementary Matters

The President's Message: re Taxation.

Mr. Wilson, in his message to Congress, December 2, 1919, said:

"I trust that the Congress will give its immediate consideration to the problem of future taxation. Simplification of the income and profits taxes has become an immediate necessity. These taxes performed indispensable service during the war. They must, however, be simplified, not only to save the taxpayer inconvenience and expense, but in order that his liability may be made certain and definite.

"With reference to the details of the revenue law, the Secretary of the Treasury and the Commissioner of Internal Revenue will lay before you for your consideration certain amendments necessary or desirable in connection with the administration of the law—recommendations which have my approval and support. It is of the utmost importance that in dealing with this matter the present law should not be disturbed so far as regards taxes for the calendar year 1920, payable in the calendar year 1921. The Congress might well consider whether the higher rates of income and profits taxes can in peace times be effectively productive of revenue, and whether they may not, on the contrary, be destructive of business activity and productive of waste and inefficiency.

"There is a point at which in peace times high rates of income and profits taxes discourage energy, remove the incentive to new enterprise, encourage extravagant expenditures and produce industrial stagnation, with consequent unemployment and other attendant evils.

"The problem is not an easy one."

THE CORPORATION TRUST COMPANY
37 Wall Street, New York.

December 3, 1919.

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1919 Income Tax Service

February 25, 1919.

This binder contains pages 5 to 54 of our 1919 Income Tax Service.

The compilation, supplementary pages and the index will be sent as soon as possible.

The next report will be No. 1 and will contain Regulation No. 45 "Individuals."

In the meantime new pages will be numbered and paragraphed for this Service and should be put in this binder as received. When you receive the compilation it will supply the missing pages.

Yours very truly,

THE CORPORATION TRUST COMPANY.

1919 Income Tax Service

February 25, 1919.

The inner section pages 5 to 11 of our 1919 Income Tax Service

The consolidation, alphabetically, page and the index will be sent in loose at a later date.

The next report will be No. 2 and will contain Regulations No. 45 "Individuals."

In the meantime, new pages will be numbered and prepared for the binding and should be put in this binder as received. These can receive the combination and dates in leaving spaces.

Very truly,

THE CORPORATION TRUST COMPANY.

"Federal Taxes on Income and Profits, imposed by the Revenue Act of 1918."
Guaranty Trust Co. of N.Y.

336.24 cop.
C817e Guaranty Trust Co.
1922

The Corporation Trust Company's

1913-1919

INCOME TAX SERVICE

IN THREE PARTS

PART I.—1913–1918.

The Income Tax Law

of

The Revenue Act of 1918

(*Public—No. 254—65th Congress.*)

Approved February 24, 1919

Compiled with

Interpreting and Administrative Regulations

Issued Under the Acts of

October 3, 1913, September 8, 1916, and October 3, 1917.

PART II.—1919.

Regulations Issued Since February 12, 1919.

PART III.

Supplementary Matters Including a Table of Forms

and

A General Index.

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The Corporation Trust Company's

1913-1919

INCOME TAX SERVICE

PART I.

1913-1918

The Income Tax Law

of

The Revenue Act of 1918

Compiled with

Interpreting and Administrative Regulations

Issued Under the Acts of

October 3, 1913, September 8, 1916, and October 3, 1917.

The Income Tax Law of 1918 (Title II of the Revenue Act of 1918) repeals the Income Tax Titles of the Acts of September 8, 1916, and October 3, 1917. The new law imposes higher rates than heretofore but contains numerous alleviating provisions, including exemption from income taxation to personal service corporations per se, restricted allowance for net losses, amortization allowance for special war equipment investments, adjustment of losses sustained in 1919 by virtue of depreciated 1918 inventory or of 1919 rebate payments on 1918 contracts and sales, more equitable depletion allowances, limited taxation of income derived from sales of mining and oil properties by the prospector or wild-catter, and credits against the tax for income and excess-profits taxes paid to other jurisdictions. The new law specifically authorizes inventories, calls for consolidated returns by affiliated corporations, allows to individuals full losses in transactions entered into for profit outside of the trade or business, permits all interest on strictly business indebtedness to be deducted by corporations, allows as a deduction to corporation, dividends received (as did the War-income-tax Act of October 3, 1917), and does away with all withholding on dividends in consequence, provides for a specific exemption of $2,000 to corporations, grants the specific personal exemption to nonresident aliens, does away with the allocation, for the purpose of applying the tax rates, of dividends from funds earned since March 1, 1913 (other than certain stock dividends), changes the date for filing returns to the fifteenth day of the third month after the close of the taxpayer's taxable year, permits individuals to file returns on a fiscal year basis, provides for regular annual returns of income by partnerships, calls for the payment of one-quarter (or all, if the taxpayer so elects) of the tax on or before the time specified for filing the return, the remaining three-quarters to be paid in equal thirds at three-month intervals thereafter, makes the supplying of information at the source in connection with payments of corporate-obligation interest and foreign items dependent on the Commissioner's calling for it, in his discretion, increases the minimum amount paid on account of salary, etc., during the calendar year necessitating a return of information in connection therewith, to $1,000, and materially changes certain administrative features. There are other modifications of prior laws, but, in general, except as noted above, the law remains as it was.

COMMENT

In the copy of the law printed herein, the official wording, punctuation and capitalization have been carefully followed. However, it has been considered advisable to introduce a scheme of spacing and indentation, numbering the arbitrary paragraphs consecutively, which it is hoped will make the various provisions more accessible.

When the law paragraphs are repeated in their proper places among the regulations, they are given, in addition to the Law-paragraph numbers which they bear, bold face general paragraph numbers to fit them in properly with the paragraphs of the regulations which precede and follow them. This will be found to be an advantage in utilizing the cross references and the general index.

The date and designation of each ruling or regulation appearing in the compilation are given. Some of the old regulations have been edited by cutting out matters that applied solely to repealed provisions of prior Acts (shown by asterisks ***), or by inserting in brackets [ ] words or figures to be read in making the particular sentence applicable to the new law.

These regulations, decisions, special letters, etc., explaining, enlarging or giving specific directions for the enforcement of the provisions of the law in a particular paragraph or group of paragraphs of the law, are printed immediately following such law paragraph or group of paragraphs. Any regulation, part of a regulation, letter or other matter contained in our 1914, 1915, 1916, 1917 and 1918 Services not found in this compilation, either has no application to the present provisions or was repealed, amended, superseded, or otherwise annulled, or was repeated in a subsequent regulation which has been used as being the latest ruling.

It must be remembered that the compilation was prepared, by necessity, before any regulations, based on the Revenue Act of 1918, were issued by the Government.

THE FEDERAL INCOME TAX LAW.

BEING TITLE II
of the
REVENUE ACT OF 1918

To Which Have Been Added
Title I—General Definitions
and Parts of
Title XIII—General Administrative Provisions
and
Title XIV—General Provisions
of the Revenue Act of 1918

The arbitrary paragraphs are numbered consecutively on the left. Each paragraph will be found repeated, followed by the provisions of the regulations, if any, relating to it, in the body of the book, beginning on page 55 at the running paragraph the number of which has been placed on the right opposite that particular paragraph in the reprint below.

The headings are a part of the Act as passed, except when shown in brackets.

(See Law and Regulations, Page 55.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I.—GENERAL DEFINITIONS.

Law Paragraph		Repeated at ¶
¶1	Section. 1. That when used in this Act—	
¶2	The term "person" includes partnerships and corporations, as well as individuals;	762 1686
¶3	The term "corporation" includes associations, joint-stock companies, and insurance companies;	1685
¶4	The term "domestic" when applied to a corporation or partnership means created or organized in the United States;	2331
¶5	The term "foreign" when applied to a corporation or partnership means created or organized outside the United States;	2280
¶6	The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia;	2281
¶7	The term "Secretary" means the Secretary of the Treasury;	751
¶8	The term "Commissioner" means the Commissioner of Internal Revenue;	752
¶9	The term "collector" means collector of internal revenue;	753

Law Paragraph		Repeated at ¶
¶10	The term "Revenue Act of 1916" means the Act entitled "An Act to increase the revenue, and for other purposes," approved September 8, 1916;	480
¶11	The term "Revenue Act of 1917" means the Act entitled "An Act to provide revenue to defray war expenses, and for other purposes," approved October 3, 1917;	482
¶12	The term "taxpayer" includes any person, trust or estate subject to a tax imposed by this Act;	761
¶13	The term "Government contract" means (a) a contract made with the United States, or with any department, bureau, officer, commission, board, or agency, under the United States and acting in its behalf, or with any agency controlled by any of the above if the contract is for the benefit of the United States, or (b) a subcontract made with a contractor performing such a contract if the products or services to be furnished under the subcontract are for the benefit of the United States. The term "Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive" when applied to a contract of the kind referred to in clause (a) of this paragraph, includes all such contracts which, although entered into during such period, were originally not enforceable, but which have been or may become enforceable by reason of subsequent validation in pursuance of law;	1313
¶14	The term "military or naval forces of the United States" includes the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, and the Navy Nurse Corps, Female, but this shall not be deemed to exclude other units otherwise included within such term;	1007
¶15	The term "present war" means the war in which the United States is now engaged against the German Government.	1008
¶16	For the purposes of this Act the date of the termination of the present war shall be fixed by proclamation of the President.	1009

TITLE II.—INCOME TAX.

Part I.—General Provisions.

Definitions.

¶17	Sec. 200. That when used in this title—	476
¶18	The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under section 212 or section 232.	477 1663
¶19	The term "fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.	478 1664
¶20	The first taxable year, to be called the taxable year 1918, shall be the calendar year 1918 or any fiscal year ending during the calendar year 1918;	479 1665

Law Paragraph		Repeated at ¶
¶21	The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person, trust or estate;	1169
¶22	The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 221 or section 237;	584
¶23	The term "personal service corporation" means a corporation whose income is to be ascribed primarily to the activities of the principal owners or stockholders who are themselves regularly engaged in the active conduct of the affairs of the corporation and in which capital (whether invested or borrowed) is not a material income-producing factor;	1308
¶24	but does not include any foreign corporation,	1309
¶25	nor any corporation 50 per centum or more of whose gross income consists either	1310
¶26	(1) of gains, profits or income derived from trading as a principal, or	1311
¶27	(2) of gains, profits, commissions, or other income, derived from a Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive;	1312
¶28	The term "paid," for the purposes of the deductions and credits under this title, means "paid or accrued" or "paid or incurred," and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212.	1923

Dividends.

¶29	Sec. 201. (a) That the term "dividend" when used in this title (except in paragraph (10) of subdivision (a) of section 234) means	770
¶30	(1) any distribution made by a corporation, other than a personal service corporation, to its shareholders or members, whether in cash or in other property or in stock of the corporation, out of its earnings or profits accumulated since February 28, 1913, or	771
¶31	(2) any such distribution made by a personal service corporation out of its earnings or profits accumulated since February 28, 1913, and prior to January 1, 1918.	772
¶32	(b) Any distribution shall be deemed to have been made from earnings or profits unless all earnings and profits have first been distributed.	800
¶33	Any distribution made in the year 1918 or any year thereafter shall be deemed to have been made from earnings or profits accumulated since February 28, 1913, or,	802

Law Paragraph		Repeated at ¶
¶34	in the case of a personal service corporation, from the most recently accumulated earnings or profits;	803
¶35	but any earnings or profits accumulated prior to March 1, 1913, may be distributed in stock dividends or otherwise, exempt from the tax, after the earnings and profits accumulated since February 28, 1913, have been distributed.	810
¶36	(c) A dividend paid in stock of the corporation shall be considered income to the amount of the earnings or profits distributed.	811
¶37	Amounts distributed in the liquidation of a corporation shall be treated as payments in exchange for stock or shares, and any gain or profit realized thereby shall be taxed to the distributee as other gains or profits.	828
¶38	(d) If any stock dividend (1) is received by a taxpayer between January 1 and November 1, 1918, both dates inclusive, or	831
¶39	(2) is during such period bona fide authorized or declared, and entered on the books of the corporation, and is received by a taxpayer after November 1, 1918, and before the expiration of thirty days after passage of this Act,	832
¶40	then such dividend shall, in the manner provided in section 206, be taxed to the recipient at the rates prescribed by law for the years in which the corporation accumulated the earnings or profits from which such dividend was paid, but the dividend shall be deemed to have been paid from the most recently accumulated earnings or profits.	833
¶41	(e) Any distribution made during the first sixty days of any taxable year shall be deemed to have been made from earnings or profits accumulated during preceding taxable years;	845
¶42	but any distribution made during the remainder of the taxable year shall be deemed to have been made from earnings or profits accumulated between the close of the preceding taxable year and the date of distribution, to the extent of such earnings or profits, and if the books of the corporation do not show the amount of such earnings or profits, the earnings or profits for the accounting period within which the distribution was made shall be deemed to have been accumulated ratably during such period.	846

Basis for Determining Gain or Loss.

¶43	Sec. 202. (a) That for the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition of property, real, personal, or mixed, the basis shall be—	1854
¶44	(1) In the case of property acquired before March 1, 1913, the fair market price or value of such property as of that date; and	1855
¶45	(2) In the case of property acquired on or after that date, the cost thereof; or the inventory value, if the inventory is made in accordance with section 203.	1860

Law Paragraph		Repeated at ¶
¶46	(b) When property is exchanged for other property, the property received in exchange shall for the purpose of determining gain or loss be treated as the equivalent of cash to the amount of its fair market value, if any;	1909
¶47	but when in connection with the reorganization, merger, or consolidation of a corporation a person receives in place of stock or securities owned by him new stock or securities of no greater aggregate par or face value,	1910
¶48	no gain or loss shall be deemed to occur from the exchange, and the new stock or securities received shall be treated as taking the place of the stock, securities, or property exchanged.	1911
¶49	When in the case of any such reorganization, merger or consolidation the aggregate par or face value of the new stock or securities received is in excess of the aggregate par or face value of the stock or securities exchanged, a like amount in par or face value of the new stock or securities received shall be treated as taking the place of the stock or securities exchanged, and the amount of the excess in par or face value shall be treated as a gain to the extent that the fair market value of the new stock or securities is greater than the cost (or if acquired prior to March 1, 1913, the fair market value as of that date) of the stock or securities exchanged.	1912

Inventories.

¶50	Sec. 203. That whenever in the opinion of the Commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.	1861

Net Losses.

¶51	Sec. 204. (a) That as used in this section the term "net loss" refers only to net losses resulting from either	1913
¶52	(1) the operation of any business regularly carried on by the taxpayer, or	1914
¶53	(2) the bona fide sale by the taxpayer of plant, buildings, machinery, equipment or other facilities, constructed, installed or acquired by the taxpayer on or after April 6, 1917, for the production of articles contributing to the prosecution of the present war;	1915
¶54	and when so resulting means the excess of the deductions allowed by law (excluding in the case of corporations amounts allowed as a deduction under paragraph (6) of subdivision (a) of section 234) over the sum of the gross income plus any interest received free from taxation both under this title and under Title III.	1916

Law Paragraph		Repeated at ¶
¶55	(b) If for any taxable year beginning after October 31, 1918, and ending prior to January 1, 1920, it appears upon the production of evidence satisfactory to the Commissioner that any taxpayer has sustained a net loss, the amount of such net loss shall under regulations prescribed by the Commissioner with the approval of the Secretary be deducted from the net income of the taxpayer for the preceding taxable year;	1917
¶56	and the taxes imposed by this title and by Title III for such preceding taxable year shall be redetermined accordingly.	1918
¶57	Any amount found to be due to the taxpayer upon the basis of such redetermination shall be credited or refunded to the taxpayer in accordance with the provisions of section 252.	1919
¶58	If such net loss is in excess of the net income for such preceding taxable year, the amount of such excess shall under regulations prescribed by the Commissioner with the approval of the Secretary be allowed as a deduction in computing the net income for the succeeding taxable year.	1920
¶59	(c) The benefit of this section shall be allowed to the members of a partnership and the beneficiaries of an estate or trust under regulations prescribed by the Commissioner with the approval of the Secretary.	1921

Fiscal Year with Different Rates.

¶60	Sec. 205. (a) That if a taxpayer makes return for a fiscal year beginning in 1917 and ending in 1918, his tax under this title for the first taxable year shall be the sum of:	1666
¶61	(1) the same proportion of a tax for the entire period computed under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 and under Title I of the Revenue Act of 1917, which the portion of such period falling within the calendar year 1917 is of the entire period, and	1667
¶62	(2) the same proportion of a tax for the entire period computed under this title at the rates for the calendar year 1918 which the portion of such period falling within the calendar year 1918 is of the entire period:	1668
¶63	*Provided, That in the case of a personal service corporation the amount to be paid shall be only that specified in clause* (1).	1669
¶64	Any amount heretofore or hereafter paid on account of the tax imposed for such fiscal year by Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917, and by Title I of the Revenue Act of 1917, shall be credited towards the payment of the tax imposed for such fiscal year by this act, and if the amount so paid exceeds the amount of such tax imposed by this act, or, in the case of a personal service corporation, the amount specified in clause (1), the excess shall be credited or refunded in accordance with the provisions of section 252.	1670

Law Paragraph		Repeated at ¶
¶65	(b) If a taxpayer makes a return for a fiscal year beginning in 1918 and ending in 1919, the tax under this title for such fiscal year shall be the sum of:	1671
¶66	(1) the same proportion of a tax for the entire period computed under this title at the rates specified for the calendar year 1918 which the portion of such period falling within the calendar year 1918 is of the entire period, and	1672
¶67	(2) the same proportion of a tax for the entire period computed under this title at the rates specified for the calendar year 1919 which the portion of such period falling within the calendar year 1919 is of the entire period.	1673
¶68	(c) If a fiscal year of a partnership begins in 1917 and ends in 1918 or begins in 1918 and ends in 1919, then notwithstanding the provisions of subdivision (b) of section 218,	1674
¶69	(1) the rates for the calendar year during which such fiscal year begins shall apply to an amount of each partner's share of such partnership net income (determined under the law applicable to such year) equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year, and	1675
¶70	(2) the rates for the calendar year during which such fiscal year ends shall apply to an amount of each partner's share of such partnership net income (determined under the law applicable to such calendar year) equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year:	1676
¶71	*Provided, That in the case of a personal service corporation with respect to a fiscal year beginning in* 1917 *and ending in* 1918, *the amount specified in clause* (1) *shall not be subject to normal tax.*	1677

Parts of Income Subject to Rates for Different Years.

¶72	Sec. 206. That whenever parts of a taxpayer's income are subject to rates for different calendar years, the part subject to the rates for the most recent calendar year shall be placed in the lower brackets of the rate schedule provided in this title, the part subject to the rates for the next preceding calendar year shall be placed in the next higher brackets of the rate schedule applicable to that year, and so on until the entire net income has been accounted for.	1678
¶73	In determining the income, any deductions, exemptions or credits of a kind not plainly and properly chargeable against the income taxable at rates for a preceding year shall first be applied against the income subject to rates for the most recent calendar year;	1679
¶74	but any balance thereof shall be applied against the income subject to the rates of the next preceding year or years until fully allowed.	1680

Law Paragraph | Repeated at ¶

Part II.—Individuals.

Normal Tax.

¶75 Sec. 210. That, in lieu of the taxes imposed by subdivision (a) of section 1 of the Revenue Act of 1916 and by section 1 of the Revenue Act of 1917, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax at the following rates: 471 497

¶76 (a) For the calendar year 1918, 12 per centum of the amount of the net income in excess of the credits provided in section 216: 472 498

¶77 *Provided, That in the case of a citizen or resident of the United States the rate upon the first* $4,000 *of such excess amount shall be* 6 *per centum*; 473

¶78 (b) For each calendar year thereafter, 8 per centum of the amount of the net income in excess of the credits provided in section 216: 474 499

¶79 *Provided, That in the case of a citizen or resident of the United States the rate upon the first* $4,000 *of such excess amount shall be* 4 *per centum.* 475

Surtax.

¶80 Sec. 211. (a) That, in lieu of the taxes imposed by subdivision (b) of section 1 of the Revenue Act of 1916 and by section 2 of the Revenue Act of 1917, but in addition to the normal tax imposed by section 210 of this Act, there shall be levied, collected, and paid for each taxable year upon the net income of every individual, a surtax equal to the sum of the following: 736 500

¶81 1 per centum of the amount by which the net income exceeds $5,000 and does not exceed $6,000; 737
2 per centum of the amount by which the net income exceeds $6,000 and does not exceed $8,000;
3 per centum of the amount by which the net income exceeds $8,000 and does not exceed $10,000;
4 per centum of the amount by which the net income exceeds $10,000 and does not exceed $12,000;
5 per centum of the amount by which the net income exceeds $12,000 and does not exceed $14,000;
6 per centum of the amount by which the net income exceeds $14,000 and does not exceed $16,000;
7 per centum of the amount by which the net income exceeds $16,000 and does not exceed $18,000;
8 per centum of the amount by which the net income exceeds $18,000 and does not exceed $20,000;
9 per centum of the amount by which the net income exceeds $20,000 and does not exceed $22,000;
10 per centum of the amount by which the net income exceeds $22,000 and does not exceed $24,000;
11 per centum of the amount by which the net income exceeds $24,000 and does not exceed $26,000;

Law Paragraph		Repeated at ¶
(¶81)	12 per centum of the amount by which the net income exceeds $26,000 and does not exceed $28,000; 13 per centum of the amount by which the net income exceeds $28,000 and does not exceed $30,000; 14 per centum of the amount by which the net income exceeds $30,000 and does not exceed $32,000; 15 per centum of the amount by which the net income exceeds $32,000 and does not exceed $34,000; 16 per centum of the amount by which the net income exceeds $34,000 and does not exceed $36,000; 17 per centum of the amount by which the net income exceeds $36,000 and does not exceed $38,000; 18 per centum of the amount by which the net income exceeds $38,000 and does not exceed $40,000; 19 per centum of the amount by which the net income exceeds $40,000 and does not exceed $42,000; 20 per centum of the amount by which the net income exceeds $42,000 and does not exceed $44,000; 21 per centum of the amount by which the net income exceeds $44,000 and does not exceed $46,000; 22 per centum of the amount by which the net income exceeds $46,000 and does not exceed $48,000; 23 per centum of the amount by which the net income exceeds $48,000 and does not exceed $50,000; 24 per centum of the amount by which the net income exceeds $50,000 and does not exceed $52,000; 25 per centum of the amount by which the net income exceeds $52,000 and does not exceed $54,000; 26 per centum of the amount by which the net income exceeds $54,000 and does not exceed $56,000; 27 per centum of the amount by which the net income exceeds $56,000 and does not exceed $58,000; 28 per centum of the amount by which the net income exceeds $58,000 and does not exceed $60,000; 29 per centum of the amount by which the net income exceeds $60,000 and does not exceed $62,000; 30 per centum of the amount by which the net income exceeds $62,000 and does not exceed $64,000; 31 per centum of the amount by which the net income exceeds $64,000 and does not exceed $66,000; 32 per centum of the amount by which the net income exceeds $66,000 and does not exceed $68,000; 33 per centum of the amount by which the net income exceeds $68,000 and does not exceed $70,000; 34 per centum of the amount by which the net income exceeds $70,000 and does not exceed $72,000; 35 per centum of the amount by which the net income exceeds $72,000 and does not exceed $74,000; 36 per centum of the amount by which the net income exceeds $74,000 and does not exceed $76,000; 37 per centum of the amount by which the net income exceeds $76,000 and does not exceed $78,000; 38 per centum of the amount by which the net income exceeds $78,000 and does not exceed $80,000;	(737)

Law Paragraph		Repeated at ¶
(¶81)	39 per centum of the amount by which the net income exceeds $80,000 and does not exceed $82,000; 40 per centum of the amount by which the net income exceeds $82,000 and does not exceed $84,000; 41 per centum of the amount by which the net income exceeds $84,000 and does not exceed $86,000; 42 per centum of the amount by which the net income exceeds $86,000 and does not exceed $88,000; 43 per centum of the amount by which the net income exceeds $88,000 and does not exceed $90,000; 44 per centum of the amount by which the net income exceeds $90,000 and does not exceed $92,000; 45 per centum of the amount by which the net income exceeds $92,000 and does not exceed $94,000; 46 per centum of the amount by which the net income exceeds $94,000 and does not exceed $96,000; 47 per centum of the amount by which the net income exceeds $96,000 and does not exceed $98,000; 48 per centum of the amount by which the net income exceeds $98,000 and does not exceed $100,000; 52 per centum of the amount by which the net income exceeds $100,000 and does not exceed $150,000; 56 per centum of the amount by which the net income exceeds $150,000 and does not exceed $200,000; 60 per centum of the amount by which the net income exceeds $200,000 and does not exceed $300,000; 63 per centum of the amount by which the net income exceeds $300,000 and does not exceed $500,000; 64 per centum of the amount by which the net income exceeds $500,000 and does not exceed $1,000,000; 65 per centum of the amount by which the net income exceeds $1,000,000.	(737)
¶82	(b) In the case of a bona fide sale of mines, oil or gas wells, or any interest therein, where the principal value of the property has been demonstrated by prospecting or exploration and discovery work done by the taxpayer, the portion of the tax imposed by this section attributable to such sale shall not exceed 20 per centum of the selling price of such property or interest.	738

Net Income Defined

¶83	Sec. 212. (a) That in the case of an individual the term "net income" means the gross income as defined in section 213, less the deductions allowed by section 214.	754 501
¶84	(b) The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer;	755
¶85	but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the Commissioner does clearly reflect the income.	756

Law Paragraph		Repeated at ¶
¶86	If the taxpayer's annual accounting period is other than a fiscal year as defined in section 200 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.	757
¶87	If a taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the Commissioner, be computed on the basis of such new accounting period, subject to the provisions of section 226.	758

Gross Income Defined.

¶88	Sec. 213. That for the purposes of this title (except as otherwise provided in section 233) the term "gross income"—	763
¶89	(a) Includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, and all other officers and employees, whether elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof, or the District of Columbia, the compensation received as such), of whatever kind and in whatever form paid, or	764
¶90	from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property;	765
¶91	also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or	766
¶92	gains or profits and income derived from any source whatever.	767
¶93	The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under subdivision (b) of section 212, any such amounts are to be properly accounted for as of a different period; but	768
¶94	(b) Does not include the following items, which shall be exempt from taxation under this title:	944
¶95	(1) The proceeds of life insurance policies paid upon the death of the insured to individual beneficiaries or to the estate of the insured;	945
¶96	(2) The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract;	946
¶97	(3) The value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included in gross income);	961

Law Paragraph		Repeated at ¶
¶98	(4) Interest upon (a) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or	963
¶99	(b) securities issued under the provisions of the Federal Farm Loan Act of July 17, 1916; or	964
¶100	(c) the obligations of the United States or its possessions; or	965
¶101	(d) bonds issued by the War Finance Corporation:	966
¶102	*Provided, That every person owning any of the obligations, securities or bonds enumerated in clauses (a),(b), (c) and (d) shall, in the return required by this title, submit a statement showing the number and amount of such obligations, securities and bonds owned by him and the income received therefrom, in such form and with such information as the Commissioner may require.*	967
¶103	In the case of obligations of the United States issued after September 1, 1917, and in the case of bonds issued by the War Finance Corporation, the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt from taxation to the taxpayer both under this title and under Title III;	975
¶104	(5) The income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments, or from any other source within the United States;	996
¶105	(6) Amounts received, through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness;	998
¶106	(7) Income derived from any public utility or the exercise of any essential governmental function and accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, or income accruing to the government of any possession of the United States, or any political subdivision thereof.	1004
¶107	Whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, prior to September 8, 1916, entered in good faith into a contract with any person, the object and purpose of which is to acquire, construct, operate, or maintain a public utility, no tax shall be levied under the provisions of this title upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, District of Columbia, or political subdivision; but this provision is not intended to confer upon such person any financial gain or exempton or to relieve such person from the payment of a tax as provided for in this title upon the part or	1005

Law Paragraph		Repeated at ¶
	portion of such income to which such person is entitled under such contract;	
¶108	(8) So much of the amount received during the present war by a person in the military or naval forces of the United States as salary or compensation in any form from the United States for active services in such forces, as does not exceed $3,500.	1006
¶109	(c) In the case of nonresident alien individuals, gross income includes only the gross income from sources within the United States,	503
¶110	including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, dividends from resident corporations, and	505
¶111	including all amounts received (although paid under a contract for the sale of goods or otherwise) representing profits on the manufacture and disposition of goods within the United States.	508

Deductions Allowed.

¶112	Sec. 214. (a) That in computing net income there shall be allowed as deductions:	1019
¶113	(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business,	1020
¶114	including a reasonable allowance for salaries or other compensation for personal services actually rendered, and	1021
¶115	including rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity;	1022
¶116	(2) All interest paid or accrued within the taxable year on indebtedness,	1049
¶117	except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917), the interest upon which is wholly exempt from taxation under this title as income to the taxpayer, or,	1050
¶118	in the case of a nonresident alien individual, the proportion of such interest which the amount of his gross income from sources within the United States bears to the amount of his gross income from all sources within and without the United States;	531
¶119	(3) Taxes paid or accrued within the taxable year imposed	1052
¶120	(a) by the authority of the United States, except income, war-profits and excess-profits taxes; or	1053
¶121	(b) by the authority of any of its possessions, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 222; or	1054

Law Paragraph		Repeated at ¶
¶122	(c) by the authority of any State or Territory, or any county, school district, municipality, or other taxing subdivision of any State or Territory,	1055
¶123	not including those assessed against local benefits of a kind tending to increase the value of the property assessed; or	1056
¶124	(d) in the case of a citizen or resident of the United States, by the authority of any foreign country, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 222; or	1057
¶125	(e) in the case of a nonresident alien individual, by the authority of any foreign country (except income, war-profits and excess-profits taxes, and taxes assessed against local benefits of a kind tending to increase the value of the property assessed), upon property or business;	533
¶126	(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in trade or business;	1066
¶127	(5) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit, though not connected with the trade or business;	1084
¶128	but in the case of a nonresident alien individual only as to such transactions within the United States;	534
¶129	(6) Losses sustained during the taxable year of property not connected with the trade or business	1085
¶130	(but in the case of a nonresident alien individual only property within the United States)	535
¶131	if arising from fires, storms, shipwreck, or other casualty, or from theft, and if not compensated for by insurance or otherwise;	1086
¶132	(7) Debts ascertained to be worthless and charged off within the taxable year;	1088
¶133	(8) A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence;	1089
¶134	(9) In the case of buildings, machinery, equipment, or other facilities, constructed, erected, installed, or acquired, on or after April 6, 1917, for the production of articles contributing to the prosecution of the present war, and in the case of vessels constructed or acquired on or after such date for the transportation of articles or men contributing to the prosecution of the present war, there shall be allowed a reasonable deduction for the amortization of such part of the cost of such facilities or vessels as has been borne by the taxpayer, but not again including any amount otherwise allowed under this title or previous Acts of Congress as a deduction in computing net income.	1093

Law Paragraph		Repeated at ¶
¶135	At any time within three years after the termination of the present war, the Commissioner may, and at the request of the taxpayer shall, reexamine the return, and if he then finds as a result of an appraisal or from other evidence that the deduction originally allowed was incorrect, the taxes imposed by this title and by Title III for the year or years affected shall be redetermined; and	1094
¶136	the amount of tax due upon such redetermination, if any, shall be paid upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 252;	1095
¶137	(10) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case, based upon cost including cost of development not otherwise deducted:	1096
¶138	*Provided, That in the case of such properties acquired prior to March 1, 1913, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date:*	1097
¶139	*Provided further, That in the case of mines, oil and gas wells, discovered by the taxpayer, on or after March 1, 1913, and not acquired as the result of purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery, or within thirty days thereafter;*	1098
¶140	such reasonable allowance in all the above cases to be made under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary.	1099
¶141	In the case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and lessee;	1100
¶142	(11) Contributions or gifts made within the taxable year to corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to the special fund for vocational rehabilitation authorized by section 7 of the Vocational Rehabilitation Act, to an amount not in excess of 15 per centum of the taxpayer's net income as computed without the benefit of this paragraph. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary.	1102
¶143	In the case of a nonresident alien individual this deduction shall be allowed only as to contributions or gifts made to domestic corporations, or to such vocational rehabilitation fund;	536

Law Paragraph		Repeated at ¶
¶144	(12) (a) At the time of filing return for the taxable year 1918 a taxpayer may file a claim in abatement based on the fact that he has sustained a substantial loss (whether or not actually realized by sale or other disposition) resulting from any material reduction (not due to temporary fluctuation) of the value of the inventory for such taxable year,	1119
¶145	or from the actual payment after the close of such taxable year of rebates in pursuance of contracts entered into during such year upon sales made during such year.	1120
¶146	In such case payment of the amount of the tax covered by such claim shall not be required until the claim is decided, but the taxpayer shall accompany his claim with a bond in double the amount of the tax covered by the claim, with sureties satisfactory to the Commissioner, conditioned for the payment of any part of such tax found to be due, with interest. If any part of such claim is disallowed then the remainder of the tax due shall on notice and demand by the collector be paid by the taxpayer with interest at the rate of 1 per centum per month from the time the tax would have been due had no such claim been filed.	1121
¶147	If it is shown to the satisfaction of the Commissioner that such substantial loss has been sustained, then in computing the tax imposed by this title the amount of such loss shall be deducted from the net income.	1122
¶148	(b) If no such claim is filed, but it is shown to the satisfaction of the Commissioner that during the taxable year 1919 the taxpayer has sustained a substantial loss of the character above described then the amount of such loss shall be deducted from the net income for the taxable year 1918 and the tax imposed by this title for such year shall be redetermined accordingly. Any amount found to be due to the taxpayer upon the basis of such redetermination shall be credited or refunded to the taxpayer in accordance with the provisions of section 252.	1123
¶149	(b) In the case of a nonresident alien individual the deductions allowed in paragraphs (1), (4), (7), (8), (9), (10), (12), and clause (e) of paragraph (3), of subdivision (a) shall be allowed only if and to the extent that they are connected with income arising from a source within the United States;	529
¶150	and the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary.	530

Items Not Deductible.

¶151	Sec. 215. That in computing net income no deduction shall in any case be allowed in respect of—	1023
¶152	(a) Personal, living, or family expenses;	1024
¶153	(b) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;	1025

Law Paragraph		Repeated at ¶
¶154	(c) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; or	1027
¶155	(d) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.	1028

Credits Allowed.

¶156	Sec. 216. That for the purpose of the normal tax only there shall be allowed the following credits:	1124
¶157	(a) The amount received as dividends from a corporation which is taxable under this title upon its net income, and amounts received as dividends from a personal service corporation out of earnings or profits upon which income tax has been imposed by Act of Congress;	1125
¶158	(b) The amount received as interest upon obligations of the United States and bonds issued by the War Finance Corporation, which is included in gross income under section 213;	1127
¶159	(c) In the case of a single person, a personal exemption of $1,000, or	1128
¶160	in the case of the head of a family or a married person living with husband or wife, a personal exemption of $2,000.	1129
¶161	A husband and wife living together shall receive but one personal exemption of $2,000 against their aggregate net income;	1134
¶162	and in case they make separate returns, the personal exemption of $2,000 may be taken by either or divided between them;	1136
¶163	(d) $200 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer, if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective.	1138
¶164	(e) In the case of a nonresident alien individual who is a citizen or subject of a country which imposes an income tax, the credits allowed in subdivisions (c) and (d) shall be allowed only if such country allows a similar credit to citizens of the United States not residing in such country.	537

Nonresident Aliens—Allowance of Deductions and Credits.

¶165	Sec. 217. That a nonresident alien individual shall receive the benefit of the deductions and credits allowed in this title only by filing or causing to be filed with the collector a true and accurate return of his total income received from all sources corporate or otherwise in the United States, in the manner prescribed by this title, including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits:	538

Law Paragraph		Repeated at ¶
¶166	*Provided, That the benefit of the credits allowed in subdivisions (c) and (d) of section 216 may, in the discretion of the Commissioner, and except as otherwise provided in subdivision (e) of that section, be received by filing a claim therefor with the withholding agent.*	541
¶167	In case of failure to file a return, the collector shall collect the tax on such income, and all property belonging to such nonresident alien individual shall be liable to distraint for the tax.	542

Partnerships and Personal Service Corporations.

¶168	Sec. 218. (a) That individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.	1269
¶169	There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or,	1280
¶170	if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed.	1281
¶171	The partner shall, for the purpose of the normal tax, be allowed as credits, in addition to the credits allowed to him under section 216, his proportionate share of such amounts specified in subdivisions (a) and (b) of section 216 as are received by the partnership.	1289
¶172	(b) If a fiscal year of a partnership ends during a calendar year for which the rates of tax differ from those for the preceding calendar year, then	1290
¶173	(1) the rates for such preceding calendar year shall apply to an amount of each partner's share of such partnership net income equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year, and	1291
¶174	(2) the rates for the calendar year during which such fiscal year ends shall apply to the remainder.	1292
¶175	(c) In the case of an individual member of a partnership which makes return for a fiscal year beginning in 1917 and ending in 1918, his proportionate share of any excess-profits tax imposed upon the partnership under the Revenue Act of 1917 with respect to that part of such fiscal year falling in 1917, shall, for the purpose of determining the tax imposed by this title, be credited against that portion of the net income embraced in his personal return for the taxable year 1918 to which the rates for 1917 apply.	1294
¶176	(d) The net income of the partnership shall be computed in the same manner and on the same basis as provided in section 212 except	1295

Law Paragraph		Repeated at ¶
	that the deduction provided in paragraph (11) of subdivision (a) of section 214 shall not be allowed.	
¶177	(e) Personal service corporations shall not be subject to taxation under this title, but the individual stockholders thereof shall be taxed in the same manner as the members of partnerships.	1305
¶178	All the provisions of this title relating to partnerships and the members thereof shall so far as practicable apply to personal service corporations and the stockholders thereof:	1306
¶179	*Provided, That for the purpose of this subdivision amounts distributed by a personal service corporation during its taxable year shall be accounted for by the distributees; and any portion of the net income remaining undistributed at the close of its taxable year shall be accounted for by the stockholders of such corporation at the close of its taxable year in proportion to their respective shares.*	1307

Estates and Trusts.

¶180	Sec. 219. (a) That the tax imposed by sections 210 and 211 shall apply to the income of estates or of any kind of property held in trust, including—	1217
¶181	(1) Income received by estates of deceased persons during the period of administration or settlement of the estate;	1218
¶182	(2) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;	1227
¶183	(3) Income held for future distribution under the terms of the will or trust; and	1231
¶184	(4) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant to be held or distributed as the court may direct.	1207
¶185	(b) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts.	1179
¶186	The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212,	1247
¶187	except that there shall also be allowed as a deduction (in lieu of the deduction authorized by paragraph (11) of subdivision (a) of section 214) any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is during the taxable year paid to or permanently set aside for the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, or any corporation organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual;	1248

Law Paragraph		Repeated at ¶
¶188	and in cases under paragraph (4) of subdivision (a) of this section the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.	1260
¶189	(c) In cases under paragraph (1), (2), or (3) of subdivision (a) the tax shall be imposed upon the net income of the estate or trust and shall be paid by the fiduciary,	1244
¶190	except that in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income properly paid or credited to any legatee, heir or other beneficiary.	1249
¶191	In such cases the estate or trust shall, for the purpose of the normal tax, be allowed the same credits as are allowed to single persons under section 216.	1258
¶192	(d) In cases under paragraph (4) of subdivision (a),	1208
¶193	and in the case of any income of an estate during the period of administration or settlement permitted by subdivision (c) to be deducted from the net income upon which tax is to be paid by the fiduciary,	1209
¶194	the tax shall not be paid by the fiduciary, but there shall be included in computing the net income of each beneficiary his distributive share, whether distributed or not, of the net income of the estate or trust for the taxable year, or,	1210
¶195	if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year upon the basis of which such beneficiary's net income is computed.	1211
¶196	In such cases the beneficiary shall, for the purpose of the normal tax, be allowed as credits in addition to the credits allowed to him under section 216, his proportionate share of such amounts specified in subdivisions (a) and (b) of section 216 as are received by the estate or trust.	1214

Profits of Corporations Taxable to Stockholders.

¶197	Sec. 220. That if any corporation, however created or organized, is formed or availed of for the purpose of preventing the imposition of the surtax upon its stockholders or members through the medium of permitting its gains and profits to accumulate instead of being divided or distributed, such corporation shall not be subject to the tax imposed by section 230, but the stockholders or members thereof shall be subject to taxation under this title in the same manner as provided in subdivision (e) of section 218 in the case of stockholders	746

Law Paragraph		Repeated at ¶
	of a personal service corporation, except that the tax imposed by Title III shall be deducted from the net income of the corporation before the computation of the proportionate share of each stockholder or member.	
¶198	The fact that any corporation is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business, shall be prima facie evidence of a purpose to escape the surtax;	747
¶199	but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the tax in such case unless the Commissioner certifies that in his opinion such accumulation is unreasonable for the purposes of the business.	748
¶200	When requested by the Commissioner, or any collector, every corporation shall forward to him a correct statement of such gains and profits and the names and addresses of the individuals or shareholders who would be entitled to the same if divided or distributed, and of the amounts that would be payable to each.	749

Payment of Tax at Source.

¶201	Sec. 221. (a) That all individuals, corporations and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States,	553
¶202	having the control, receipt, custody, disposal, or payment, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annua or periodical gains, profits, and income,	554
¶203	of any nonresident alien individual	555
¶204	(other than income received as dividends from a corporation which taxable under this title upon its net income)	556
¶205	shall (except in the cases provided for in subdivision (b) and except as otherwise provided in regulations prescribed by the Commissioner under section 217)	557
¶206	deduct and withhold from such annual or periodical gains, profits, and income	558
¶207	a tax equal to 8 per centum thereof:	559
¶208	*Provided, That the Commissioner may authorize such tax to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.*	602
¶209	(b) In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation contain a contract or provision by which the obligor agrees	604

Law Paragraph		Repeated at ¶
¶210	to pay any portion of the tax imposed by this title upon the obligee, or	605
¶211	to reimburse the obligee for any portion of the tax, or	606
¶212	to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon or to retain therefrom under any law of the United States,	607
¶213	the obligor shall deduct and withhold a tax equal to 2 per centum of the interest upon such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods and	608
¶214	whether payable to a nonresident alien individual or to an individual citizen or resident of the United States or to a partnership:	609
¶215	*Provided, That the Commissioner may authorize such tax to be deducted and withheld in the case of interest upon any such bonds, mortgages, deeds of trust or other obligations, the owners of which are not known to the withholding agent.*	612
¶216	Such deduction and withholding shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1, a signed notice in writing claiming the benefit of the credits provided in subdivisions (c) and (d) of section 216;	638
¶217	nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Commissioner under section 217.	641
¶218	(c) Every individual, corporation, or partnership required to deduct and withhold any tax under this section shall make return thereof on or before March first of each year	698
¶219	and shall on or before June fifteenth pay the tax to the official of the United States Government authorized to receive it.	720
¶220	Every such individual, corporation, or partnership is hereby made liable for such tax and	728
¶221	is hereby indemnified against the claims and demands of any individual, corporation, or partnership for the amount of any payments made in accordance with the provisions of this section.	729
¶222	(d) Income upon which any tax is required to be withheld at the source under this section shall be included in the return of the recipient of such income,	730
¶223	but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.	731
¶224	(e) If any tax required under this section to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent;	734

Law Paragraph		Repeated at ¶
¶225	nor in cases in which the tax is so paid shall any penalty be imposed upon or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.	735

Credit for Taxes.

¶226	Sec. 222. (a) That the tax computed under Part II of this title shall be credited with:	1059
¶227	(1) In the case of a citizen of the United States, the amount of any income, war-profits and excess-profits taxes paid during the taxable year to any foreign country, upon income derived from sources therein, or to any possession of the United States; and	1060
¶228	(2) In the case of a resident of the United States, the amount of any such taxes paid during the taxable year to any possession of the United States; and	1061
¶229	(3) In the case of an alien resident of the United States who is a citizen or subject of a foreign country, the amount of any such taxes paid during the taxable year to such country, upon income derived from sources therein, if such country, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; and	1062
¶230	(4) In the case of any such individual who is a member of a partnership or a beneficiary of an estate or trust, his proportionate share of such taxes of the partnership or the estate or trust paid during the taxable year to a foreign country or to any possession of the United States, as the case may be.	1063
¶231	(b) If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Commissioner who shall redetermine the amount of the tax due under Part II of this title for the year or years affected, and the amount of tax due upon such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 252. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the taxpayer to give a bond with sureties satisfactory to and to be approved by the Commissioner in such penal sum as the Commissioner may require, conditioned for the payment by the taxpayer of any amount of tax found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require.	1064
¶232	(c) These credits shall be allowed only if the taxpayer furnishes evidence satisfactory to the Commissioner showing the amount of income derived from sources within such foreign country or such possession of the United States, and all other information necessary for the computation of such credits.	1065

Law Paragraph		Repeated at ¶

Individual Returns.

¶233 Sec. 223. That every individual having a net income for the taxable year of $1,000 or over if single or if married and not living with husband or wife, 1142

¶234 or of $2,000 or over if married and living with husband or wife, 1143

¶235 shall make under oath a return stating specifically the items of his gross income and the deductions and credits allowed by this title. 1144

¶236 If a husband and wife living together have an aggregate net income of $2,000 or over, each shall make such a return unless the income of each is included in a single joint return. 1150

¶237 If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer. 1158

Partnership Returns.

¶238 Sec. 224. That every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed by this title, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners. 1298 to 1304

Fiduciary Returns.

¶239 Sec. 225. That every fiduciary (except receivers appointed by authority of law in possession of part only of the property of an individual) 1168

¶240 shall make under oath a return for the individual, estate or trust for which he acts 1175

¶241 (1) if the net income of such individual is $1,000 or over if single or if married and not living with husband or wife, or $2,000 or over if married and living with husband or wife, or 1196

¶242 (2) if the net income of such estate or trust is $1,000 or over or if any beneficiary of such estate or trust is a nonresident alien, 1215

¶243 stating specifically the items of the gross income and the deductions and credits allowed by this title. 1259

¶244 Under such regulations as the Commissioner with the approval of the Secretary may prescribe, a return made by one of two or more joint fiduciaries and filed in the office of the collector of the district where such fiduciary resides shall be a sufficient compliance with the above requirement. 1265

¶245 The fiduciary shall make oath that he has sufficient knowledge of the affairs of such individual, estate or trust to enable him to make the 1176

Law Paragraph | Repeated at ¶

return, and that the same is, to the best of his knowledge and belief, true and correct.

¶246 Fiduciaries required to make returns under this Act shall be subject to all the provisions of this Act which applies [apply] to individuals. 1267

Returns When Accounting Period Changed.

¶247 Sec. 226. That if a taxpayer, with the approval of the Commissioner, changes the basis of computing net income from fiscal year to calendar year a separate return shall be made for the period between the close of the last fiscal year for which return was made and the following December thirty-first. 1479

¶248 If the change is from calendar year to fiscal year, a separate return shall be made for the period between the close of the last calendar year for which return was made and the date designated as the close of the fiscal year. 1480

¶249 If the change is from one fiscal year to another fiscal year a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year. 1481

¶250 If a taxpayer making his first return for income tax keeps his accounts on the basis of a fiscal year he shall make a separate return for the period between the beginning of the calendar year in which such fiscal year ends and the end of such fiscal year. 1482

¶251 In all of the above cases the net income shall be computed on the basis of such period for which separate return is made, and the tax shall be paid thereon at the rate for the calendar year in which such period is included; 1483

¶252 and the credits provided in subdivisions (c) and (d) of section 216 shall be reduced respectively to amounts which bear the same ratio to the full credits provided in such subdivisions as the number of months in such period bears to twelve months. 1484

Time and Place for Filing Returns.

¶253 Sec. 227. (a) That returns shall be made on or before the fifteenth day of the third month following the close of the fiscal year, or, 1472

¶254 if the return is made on the basis of the calendar year, then the return shall be made on or before the fifteenth day of March. 1473

¶255 The Commissioner may grant a reasonable extension of time for filing returns whenever in his judgment good cause exists and shall keep a record of every such extension and the reason therefor. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months. 1507

Law Paragraph		Repeated at ¶
¶256	(b) Returns shall be made to the collector for the district in which is located the legal residence or principal place of business of the person making the return, or,	1526
¶257	if he has no legal residence or principal place of business in the United States, then to the collector at Baltimore, Maryland.	1527

Understatement in Returns.

¶258	Sec. 228. That if the collector or deputy collector has reason to believe that the amount of any income returned is understated, he shall give due notice to the taxpayer making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated, may increase the same accordingly.	1538
¶259	Such taxpayer may furnish sworn testimony to prove any relevant facts and if dissatisfied with the decision of the collector may appeal to the Commissioner for his decision, under such rules of procedure as may be prescribed by the Commissioner with the approval of the Secretary.	1539

PART III.—Corporations.

Tax On Corporations.

¶260	Sec. 230. (a) That, in lieu of the taxes imposed by section 10 of the Revenue Act of 1916, as amended by the Revenue Act of 1917, and by section 4 of the Revenue Act of 1917, there shall be levied, collected, and paid for each taxable year upon the net income of every corporation	1662
¶261	a tax at the following rates:	1681
¶262	(1) For the calendar year 1918, 12 per centum of the amount of the net income in excess of the credits provided in section 236; and	1682
¶263	(2) For each calendar year thereafter, 10 per centum of such excess amount.	1683
¶264	(b) For the purposes of the Act approved March 21, 1918, entitled "An Act to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes," five-sixths of the tax imposed by paragraph (1) of subdivision (a) and four-fifths of the tax imposed by paragraph (2) of subdivision (a) shall be treated as levied by an Act in amendment of Title I of the Revenue Act of 1917.	1684

Conditional and Other Exemptions.

¶265	Sec. 231. That the following organizations shall be exempt from taxation under this title—	1739
¶266	(1) Labor, agricultural, or horticultural organizations;	1740

Law Paragraph		Repeated at ¶
¶267	(2) Mutual savings banks not having a capital stock represented by shares;	1741
¶268	(3) Fraternal beneficiary societies, orders, or associations, (a) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and (b) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;	1742
¶269	(4) Domestic building and loan associations and cooperative banks without capital stock organized and operated for mutual purposes and without profit;	1743
¶270	(5) Cemetery companies owned and operated exclusively for the benefit of their members;	1744
¶271	(6) Corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual;	1745
¶272	(7) Business leagues, chambers of commerce, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private stockholder or individual;	1746
¶273	(8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare;	1747
¶274	(9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member;	1748
¶275	(10) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting expenses;	1749
¶276	(11) Farmers', fruit growers', or like associations, organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;	1750
¶277	(12) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;	1751
¶278	(13) Federal land banks and national farm-loan associations as provided in section 26 of the act approved July 17, 1916, entitled "An Act to provide capital for agricultural development, to create	1752

Law Paragraph		Repeated at ¶
	standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes";	
¶279	(14) Personal service corporations.	1753

Net Income Defined.

¶280	Sec. 232. That in the case of a corporation subject to the tax imposed by section 230 the term "net income" means the gross income as defined in section 233 less the deductions allowed by section 234, and the net income shall be computed on the same basis as is provided in subdivision (b) of section 212 or in section 226.	1787 2285

Gross Income Defined.

¶281	Sec. 233. (a) That in the case of a corporation subject to the tax imposed by section 230 the term "gross income" means the gross income as defined in section 213, except that:	1788 2286
¶282	(1) In the case of life insurance companies there shall not be included in gross income such portion of any actual premium received from any individual policyholder as is paid back or credited to or treated as an abatement of premium of such policyholder within the taxable year.	2256
¶283	(2) Mutual marine insurance companies shall include in gross income the gross premiums collected and received by them less amounts paid for reinsurance.	2264
¶284	(b) In the case of a foreign corporation gross income includes only the gross income from sources within the United States,	2287
¶285	including the interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, dividends from resident corporations, and	2296
¶286	including all amounts received (although paid under a contract for the sale of goods or otherwise) representing profits on the manufacture and disposition of goods within the United States.	2298

Deductions Allowed.

¶287	Sec. 234. (a) That in computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:	1922 2300
¶288	(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business,	1943
¶289	including a reasonable allowance for salaries or other compensation for personal services actually rendered, and	1978

Law Paragraph		Repeated at ¶
¶290	including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity;	2016
¶291	(2) All interest paid or accrued within the taxable year on its indebtedness,	2027
¶292	except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917) the interest upon which is wholly exempt from taxation under this title as income to the taxpayer, or,	2028
¶293	in the case of a foreign corporation, the proportion of such interest which the amount of its gross income from sources within the United States bears to the amount of its gross income from all sources within and without the United States;	2302
¶294	(3) Taxes paid or accrued within the taxable year imposed	2036
¶295	(a) by the authority of the United States, except income, war-profits and excess-profits taxes; or	2037
¶296	(b) by the authority of any of its possessions, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 238; or	2039
¶297	(c) by the authority of any State or Territory, or any county, school district, municipality, or other taxing subdivision of any State or Territory,	2040
¶298	not including those assessed against local benefits of a kind tending to increase the value of the property assessed; or	2041
¶299	(d) in the case of a domestic corporation, by the authority of any foreign country, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 238; or	2060
¶300	(e) in the case of a foreign corporation, by the authority of any foreign country (except income, war-profits and excess-profits taxes, and taxes assessed against local benefits of a kind tending to increase the value of the property assessed), upon the property or business:	2303
¶301	*Provided, That in the case of obligors specified in subdivision (b) of section 221 no deduction for the payment of the tax imposed by this title or any other tax paid pursuant to the contract or provision referred to in that subdivision, shall be allowed;*	2061
¶302	(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise,	2063
¶303	(5) Debts ascertained to be worthless and charged off within the taxable year;	2090

Law Paragraph		Repeated at ¶
¶304	(6) Amounts received as dividends from a corporation which is taxable under this title upon its net income, and	2102
¶305	amounts received as dividends from a personal service corporation out of earnings or profits upon which income tax has been imposed by Act of Congress;	2103
¶306	(7) A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence;	2105
¶307	(8) In the case of buildings, machinery, equipment, or other facilities, constructed, erected, installed, or acquired, on or after April 6, 1917, for the production of articles contributing to the prosecution of the present war, and in the case of vessels constructed or acquired on or after such date for the transportation of articles or men contributing to the prosecution of the present war, there shall be allowed a reasonable deduction for the amortization of such part of the cost of such facilities or vessels as has been borne by the taxpayer, but not again including any amount otherwise allowed under this title or previous Acts of Congress as a deduction in computing net income.	2164
¶308	At any time within three years after the termination of the present war the Commissioner may, and at the request of the taxpayer shall, reexamine the return, and if he then finds as a result of an appraisal or from other evidence that the deduction originally allowed was incorrect, the taxes imposed by this title and by Title III for the year or years affected shall be redetermined and	2165
¶309	the amount of tax due upon such redetermination, if any, shall be paid upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 252;	2166
¶310	(9) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case, based upon cost including cost of development not otherwise deducted:	2167
¶311	*Provided, That in the case of such properties acquired prior to March* 1, 1913, *the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date*:	2168
¶312	*Provided further, That in the case of mines, oil and gas wells, discovered by the taxpayer, on or after March* 1, 1913, *and not acquired as the result of purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery, or within thirty days thereafter;*	2169
¶313	such reasonable allowance in all the above cases to be made under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary.	2170

Law Paragraph		Repeated at ¶
¶314	In the case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and lessee;	2171
¶315	(10) In the case of insurance companies, in addition to the above: (a) The net addition required by law to be made within the taxable year to reserve funds (including in the case of assessment insurance companies the actual deposit of sums with State or Territorial officers pursuant to law as additions to guarantee or reserve funds); and (b) the sums other than dividends paid within the taxable year on policy and annuity contracts;	2248
¶316	(11) In the case of corporations issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan continuing for life and not subject to cancellation, in addition to the above, such portion of the net addition (not required by law) made within the taxable year to reserve funds as the Commissioner finds to be required for the protection of the holders of such policies only;	2254
¶317	(12) In the case of mutual marine insurance companies, there shall be allowed, in addition to the deductions allowed in paragraphs (1) to (10), inclusive, amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment and the payment thereof:	2265
¶318	(13) In the case of mutual insurance companies (other than mutual life or mutual marine insurance companies) requiring their members to make premium deposits to provide for losses and expenses, there shall be allowed, in addition to the deductions allowed in paragraphs (1) to (10), inclusive, (unless otherwise allowed under such paragraphs) the amount of premium deposits returned to their policyholders and the amount of premium deposits retained for the payment of losses, expenses, and reinsurance reserves;	2267
¶319	(14) (a) At the time of filing return for the taxable year 1918 a taxpayer may file a claim in abatement based on the fact that he has sustained a substantial loss (whether or not actually realized by sale or other disposition) resulting from any material reduction (not due to temporary fluctuation) of the value of the inventory for such taxable year,	2215
¶320	or from the actual payment after the close of such taxable year of rebates in pursuance of contracts entered into during such year upon sales made during such year.	2216
¶321	In such case payment of the amount of the tax covered by such claim shall not be required until the claim is decided, but the taxpayer shall accompany his claim with a bond in double the amount of the tax covered by the claim, with sureties satisfactory to the Commissioner, conditioned for the payment of any part of such tax found to be due, with interest. If any part of such claim is disallowed then the remainder of the tax due shall on notice and demand by the collector be paid by the taxpayer with interest at the rate of 1 per centum per month from the time the tax would have been due had no such claim been filed	2217

Law Paragraph		Repeated at ¶
¶322	If it is shown to the satisfaction of the Commissioner that such substantial loss has been sustained, then in computing the taxes imposed by this title and by Title III the amount of such loss shall be deducted from the net income.	2218
¶323	(b) If no such claim is filed, but it is shown to the satisfaction of the Commissioner that during the taxable year 1919 the taxpayer has sustained a substantial loss of the character above described then the amount of such loss shall be deducted from the net income for the taxable year 1918 and the taxes imposed by this title and by Title III for such year shall be redetermined accordingly. Any amount found to be due to the taxpayer upon the basis of such redetermination shall be credited or refunded to the taxpayer in accordance with the provisions of section 252.	2219
¶324	(b) In the case of a foreign corporation the deductions allowed in subdivision (a), except those allowed in paragraph (2) and in clauses (a), (b), and (c) of paragraph (3), shall be allowed only if and to the extent that they are connected with income arising from a source within the United States;	2304
¶325	and the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary.	2305

Items Not Deductible.

¶326	Sec. 235. That in computing net income no deduction shall in any case be allowed in respect of any of the items specified in section 215.	1944

Credits Allowed.

¶327	Sec. 236. That for the purpose only of the tax imposed by section 230 there shall be allowed the following credits:	2325
¶328	(a) The amount received as interest upon obligations of the United States and bonds issued by the War Finance Corporation, which is included in gross income under section 233;	2326
¶329	(b) The amount of any taxes imposed by Title III for the same taxable year:	2327
¶330	*Provided, That in the case of a corporation which makes return for a fiscal year beginning in* 1917 *and ending in* 1918, *in computing the tax as provided in subdivision* (a) *of section* 205, *the tax computed for the entire period under Title II of the Revenue Act of* 1917 *shall be credited against the net income computed for the entire period under Title I of the Revenue Act of* 1916 *as amended by the Revenue Act of* 1917 *and under Title I of the Revenue Act of* 1917, *and the tax computed for the entire period under Title III of this Act at the rates prescribed for the calendar year* 1918 *shall be credited against the net income computed for the entire period under this title;* and	2328
¶331	(c) In the case of a domestic corporation, $2,000.	2330

Law Paragraph		Repeated at ¶

Payment of Tax at Source.

¶332 Sec. 237. That in the case of foreign corporations subject to taxation under this title not engaged in trade or business within the United States and not having any office or place of business therein, 572

¶333 there shall be deducted and withheld at the source in the same manner and upon the same items of income as is provided in section 221 573

¶334 a tax equal to 10 per centum thereof, 574

¶335 and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section: 575

¶336 *Provided, That in the case of interest described in subdivision (b) of that section the deduction and withholding shall be at the rate of 2 per centum.* 610

Credit for Taxes.

¶337 Sec. 238. (a) That in the case of a domestic corporation the total taxes imposed for the taxable year by this title and by Title III shall be credited with the amount of any income, war-profits and excess-profits taxes paid during the taxable year 2332

¶338 to any foreign country, upon income derived from sources therein, or 2333

¶339 to any possession of the United States. 2334

¶340 If accrued taxes when paid differ from the amounts claimed as credits by the corporation, or if any tax paid is refunded in whole or in part, the corporation shall at once notify the Commissioner who shall redetermine the amount of the taxes due under this title and under Title III for the year or years affected, and the amount of taxes due upon such redetermination, if any, shall be paid by the corporation upon notice and demand by the collector, or the amount of taxes overpaid, if any, shall be credited or refunded to the corporation in accordance with the provisions of section 252. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the corporation to give a bond with sureties satisfactory to and to be approved by him in such penal sum as he may require, conditioned for the payment by the taxpayer of any amount of taxes found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require. 2335

¶341 (b) This credit shall be allowed only if the taxpayer furnishes evidence satisfactory to the Commissioner showing the amount of income derived from sources within such foreign country or such possession of the United States, as the case may be, and all other information necessary for the computation of such credit. 2336

¶342 (c) If a domestic corporation makes a return for a fiscal year beginning in 1917 and ending in 1918, only that proportion of this credit shall be allowed which the part of such period within the calendar year 1918 bears to the entire period. 2337

Law Paragraph		Repeated at ¶

Corporation Returns.

¶343 Sec. 239. That every corporation subject to taxation under this title and every personal service corporation shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title. 1398

¶344 The return shall be sworn to by the president, vice president, or other principal officer and by the treasurer or assistant treasurer. 1451

¶345 If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return shall be made by the agent. 2314

¶346 In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control. 1429

¶347 Returns made under this section shall be subject to the provisions of sections 226 and 228. 1399

¶348 When return is made under section 226 the credit provided in subdivision (c) of section 236 shall be reduced to an amount which bears the same ratio to the full credit therein provided as the number of months in the period for which such return is made bears to twelve months. 1485

Consolidated Returns.

¶349 Sec. 240. (a) That corporations which are affiliated within the meaning of this section shall, under regulations to be prescribed by the Commissioner with the approval of the Secretary, make a consolidated return of net income and invested capital for the purposes of this title and Title III, and the taxes thereunder shall be computed and determined upon the basis of such return: 1405

¶350 *Provided, That there shall be taken out of such consolidated net income and invested capital, the net income and invested capital of any such affiliated corporation organized after August* 1, 1914, *and not successor to a then existing business,* 50 *per centum or more of whose gross income consists of gains, profits, commissions, or other income, derived from a Government contract or contracts made between April* 6, 1917, *and November* 11, 1918, *both dates inclusive. In such case the corporation so taken out shall be separately assessed on the basis of its own invested capital and net income and the remainder of such affiliated group shall be assessed on the basis of the remaining consolidated invested capital and net income.* 1406

¶351 In any case in which a tax is assessed upon the basis of a consolidated return, the total tax shall be computed in the first instance 1407

Law Paragraph | Repeated at ¶

as a unit and shall then be assessed upon the respective affiliated corporations in such proportions as may be agreed upon among them, or, in the absence of any such agreement. then on the basis of the net income properly assignable to each.

¶352 There shall be allowed in computing the income tax only one specific credit of $2,000 (as provided in section 236); in computing the war-profits credit (as provided in section 311) only one specific exemption of $3,000; and in computing the excess-profits credit (as provided in section 312) only one specific exemption of $3,000. 1408

¶353 (b) For the purpose of this section two or more domestic corporations shall be deemed to be affiliated 1409

¶354 (1) if one corporation owns directly or controls through closely affiliated interests or by a nominee or nominees substantially all the stock of the other or others, or 1410

¶355 (2) if substantially all the stock of two or more corporations is owned or controlled by the same interests. 1411

¶356 (c) For the purposes of section 238 a domestic corporation which owns a majority of the voting stock of a foreign corporation shall be deemed to have paid the same proportion of any income, war-profits and excess-profits taxes paid (but not including taxes accrued) by such foreign corporation during the taxable year to any foreign country or to any possession of the United States upon income derived from sources without the United States, which the amount of any dividends (not deductible under section 234) received by such domestic corporation from such foreign corporation during the taxable year bears to the total taxable income of such foreign corporation upon or with respect to which such taxes were paid: 1412

¶357 *Provided, That in no such case shall the amount of the credit for such taxes exceed the amount of such dividends (not deductible under section 234) received by such domestic corporation during the taxable year.* 1413

Time and Place for Filing Returns.

¶358 Sec. 241. (a) That returns of corporations shall be made at the same time as is provided in subdivision (a) of section 227. 1471

¶359 (b) Returns shall be made to the collector of the district in which is located the principal place of business or principal office or agency of the corporation, or, 1530 2313

¶360 if it has no principal place of business or principal office or agency in the United States, then to the collector at Baltimore, Maryland. 1531 2315

Law Paragraph		Repeated at ¶

PART IV.—Administrative Provisions.

Payment of Taxes.

¶361 Sec. 250. (a) That except as otherwise provided in this section and sections 221 and 237 the tax shall be paid in four installments, each consisting of one-fourth of the total amount of the tax. 2339

¶362 The first installment shall be paid at the time fixed by law for filing the return, and 2340

¶363 the second installment shall be paid on the fifteenth day of the third month, 2341

¶364 the third installment on the fifteenth day of the sixth month, and 2342

¶365 the fourth installment on the fifteenth day of the ninth month, 2343

¶366 after the time fixed by law for filing the return. 2344

¶367 Where an extension of time for filing a return is granted the time for payment of the first installment shall be postponed until the date of the expiration of the period of the extension, but the time for payment of the other installments shall not be postponed unless the Commissioner so provides in granting the extension. 2345

¶368 In any case in which the time for the payment of any installment is at the request of the taxpayer thus postponed, there shall be added as part of such installment interest thereon at the rate of ½ of 1 per centum per month from the time it would have been due if no extension had been granted until paid. 2346

¶369 If any installment is not paid when due, the whole amount of the tax unpaid shall become due and payable upon notice and demand by the collector. 2347

¶370 The tax may at the option of the taxpayer be paid in a single payment instead of in installments, in which case the total amount shall be paid on or before the time fixed by law for filing the return, or, where an extension of time for filing the return has been granted, on or before the expiration of the period of such extension. 2348

¶371 (b) As soon as practicable after the return is filed, the Commissioner shall examine it. If it then appears that the correct amount of the tax is greater or less than that shown in the return, the installments shall be recomputed. 2349

¶372 If the amount already paid exceeds that which should have been paid on the basis of the installments as recomputed, the excess so paid shall be credited against the subsequent installments; and if the amount already paid exceeds the correct amount of the tax, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of section 252. 2352

¶373 If the amount already paid is less than that which should have been paid, the difference shall, to the extent not covered by any 2354

Law Paragraph | Repeated at ¶

credits then due to the taxpayer under section 252, be paid upon notice and demand by the collector.

¶374 In such case if the return is made in good faith and the understatement of the amount in the return is not due to any fault of the taxpayer, there shall be no penalty because of such understatement. 2356

¶375 If the understatement is due to negligence on the part of the taxpayer, but without intent to defraud, there shall be added as part of the tax 5 per centum of the total amount of the deficiency, plus interest at the rate of 1 per centum per month on the amount of the deficiency of each installment from the time the installment was due. 2357

¶376 If the understatement is false or fraudulent with intent to evade the tax, then, in lieu of the penalty provided by section 3176 of the Revised Statutes, as amended, for false or fraudulent returns willfully made, but in addition to other penalties provided by law for false or fraudulent returns, there shall be added as part of the tax 50 per centum of the amount of the deficiency. 2358

¶377 (c) If the return is made pursuant to section 3176 of the Revised Statutes as amended, the amount of tax determined to be due under such return shall be paid upon notice and demand by the collector. 2359

¶378 (d) Except in the case of false or fraudulent returns with intent to evade the tax, the amount of tax due under any return shall be determined and assessed by the Commissioner within five years after the return was due or was made, and no suit or proceeding for the collection of any tax shall be begun after the expiration of five years after the date when the return was due or was made. In the case of such false or fraudulent returns, the amount of tax due may be determined at any time after the return is filed, and the tax may be collected at any time after it becomes due. 2360

¶379 (e) If any tax remains unpaid after the date when it is due, and for ten days after notice and demand by the collector, then, except in the case of estates of insane, deceased, or insolvent persons, there shall be added as part of the tax the sum of 5 per centum on the amount due but unpaid, plus interest at the rate of 1 per centum per month upon such amount from the time it became due: 2397

¶380 *Provided, That as to any such amount which is the subject of a bona fide claim for abatement such sum of 5 per centum shall not be added and the interest from the time the amount was due until the claim is decided shall be at the rate of ½ of 1 per centum per month.* 2398

¶381 In the case of the first installment provided for in subdivision (a) the instructions printed on the return shall be deemed sufficient notice of the date when the tax is due and sufficient demand, and the taxpayer's computation of the tax on the return shall be deemed sufficient notice of the amount due. 2423

¶382 (f) In any case in which in order to enforce payment of a tax it is necessary for a collector to cause a warrant of distraint to be served, there shall also be added as part of the tax the sum of $5. 2424

Law Paragraph | Repeated at ¶

¶383 (g) If the Commissioner finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the Commissioner shall declare the taxable period for such taxpayer terminated at the end of the calendar month then last past and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of said tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any action or suit brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision the finding of the Commissioner, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design. A taxpayer who is not in default in making any return or paying income, war-profits, or excess-profits tax under any Act of Congress may furnish to the United States, under regulations to be prescribed by the Commissioner with the approval of the Secretary, security approved by the Commissioner that he will duly make the return next thereafter required to be filed and pay the tax next thereafter required to be paid. The Commissioner may approve and accept in like manner security for return and payment of taxes made due and payable by virtue of the provisions of this subdivision, provided the taxpayer has paid in full all other income, war-profits, or excess-profits taxes due from him under any Act of Congress. If security is approved and accepted pursuant to the provisions of this subdivision and such further or other security with respect to the tax or taxes covered thereby is given as the Commissioner shall from time to time find necessary and require, payment of such taxes shall not be enforced by any proceedings under the provisions of this subdivision prior to the expiration of the time otherwise allowed for paying such respective taxes. 2425

Receipts for Taxes.

¶384 Sec. 251. That every collector to whom any payment of any tax is made under the provisions of this title shall upon request give to the person making such payment a full written or printed receipt, stating the amount paid and the particular account for which such payment was made; 2465

¶385 and whenever any debtor pays taxes on account of payments made or to be made by him to separate creditors the collector shall, if requested by such debtor, give a separate receipt for the tax paid on account of each creditor in such form that the debtor can conveniently produce such receipts separately to his several creditors in satisfaction of their respective demands up to the amounts stated in the receipts; and such receipt shall be sufficient evidence in favor of such debtor to justify him in withholding from his next payment to his creditor the amount therein stated; but the creditor may, upon giving to 2471

Law Paragraph | Repeated at ¶

his debtor a full written receipt acknowledging the payment to him of any sum actually paid and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

Refunds.

¶386 Sec. 252. That if, upon examination of any return of income made pursuant to this Act, the Act of August 5, 1909, entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," the Act of October 3, 1913, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," the Revenue Act of 1916, as amended, or the Revenue Act of 1917, it appears that an amount of income, war-profits or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer: 2488

¶387 *Provided, That no such credit or refund shall be allowed or made after five years from the date when the return was due, unless before the expiration of such five years a claim therefor is filed by the taxpayer.* 2489

Penalties.

¶388 Sec. 253. That any individual, corporation, or partnership required under this title to pay or collect any tax, to make a return or to supply information, 1572

who fails to pay or collect such tax, to make such return, or to supply such information at the time or times required under this title,

shall be liable to a penalty of not more than $1,000.

Any individual, corporation, or partnership, or any officer or employee of any corporation or member or employee of a partnership,

who willfully refuses to pay or collect such tax, to make such return, or to supply such information at the time or times required under this title, or

who willfully attempts in any manner to defeat or evade the tax imposed by this title,

shall be guilty of a misdemeanor and shall be fined not more than $10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

Returns of Payments of Dividends.

¶389 Sec. 254. That every corporation subject to the tax imposed by this title and every personal service corporation shall, when required by the Commissioner, render a correct return duly verified under oath, of its payments of dividends, stating the name and address of each stockholder, the number of shares owned by him, and the amount of dividends paid to him. 1393

Law Paragraph | Repeated at ¶

Returns of Brokers.

¶390 Sec. 255. That every individual, corporation, or partnership doing business as a broker shall, when required by the Commissioner, render a correct return duly verified under oath, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, showing the names of customers for whom such individual, corporation, or partnership has transacted any business, with such details as to the profits, losses, or other information which the Commissioner may require, as to each of such customers, as will enable the Commissioner to determine whether all income tax due on profits or gains of such customers has been paid. 1396

Information at Source.

¶391 Sec. 256. That all individuals, corporations, and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, 1314

¶392 making payment to another individual, corporation, or partnership, 1315

¶393 of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed, or determinable gains, profits, and income 1316

¶394 (other than payments described in sections 254 and 255), 1317

¶395 of $1,000 or more in any taxable year, 1318

¶396 or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, 1319

¶397 shall render a true and accurate return to the Commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by him with the approval of the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment. 1321

¶398 Such returns may be required, regardless of amounts, (1) in the case of payments of interest upon bonds, mortgages, deeds of trust, or other similar obligations of corporations, and 1350

¶399 (2) in the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by individuals, corporations, or partnerships, undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange. 1352

¶400 When necessary to make effective the provisions of this section the name and address of the recipient of income shall be furnished upon demand of the individual, corporation, or partnership paying the income. 1371

Law Paragraph | Repeated at ¶

¶401 The provisions of this section shall apply to the calendar year 1918 and each calendar year thereafter, 1375

¶402 but shall not apply to the payment of interest on obligations of the United States. 1376

Returns to be Public Records.

¶403 Sec. 257. That returns upon which the tax has been determined by the Commissioner shall constitute public records; 1636

¶404 but they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President: 1637

¶405 *Provided, That the proper officers of any State imposing an income tax may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of the corporation, at such times and in such manner as the Secretary may prescribe:* 1638

¶406 *Provided further, That all bona fide stockholders of record owning 1 per centum or more of the outstanding stock of any corporation shall, upon making request of the Commissioner, be allowed to examine the annual income returns of such corporation and of its subsidiaries.* 1639

¶407 *Any stockholder who pursuant to the provisions of this section is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and be punished by a fine not exceeding* $1,000, *or by imprisonment not exceeding one year, or both.* 1640

¶408 The Commissioner shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the collector in each internal-revenue district and in such other places as he may determine, lists containing the names and the post-office addresses of all individuals making income-tax returns in such district. 1641

Publication of Statistics.

¶409 Sec. 258. That the Commissioner, with the approval of the Secretary, shall prepare and publish annually statistics reasonably available with respect to the operation of the income, war-profits and excess-profits-tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable. 1661

Collection of Foreign Items.

¶410 Sec. 259. That all individuals, corporations, or partnerships undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner and 1378

Law Paragraph		Repeated at ¶
¶411	shall be subject to such regulations enabling the Government to obtain the information required under this title as the Commissioner, with the approval of the Secretary, shall prescribe;	1389
¶412	and whoever knowingly undertakes to collect such payments without having obtained a license therefor, or without complying with such regulations, shall be guilty of a misdemeanor and shall be fined not more than $5,000, or imprisoned for not more than one year, or both.	1391

Citizens of United States Possessions.

¶413	Sec. 260. That any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States, shall be subject to taxation under this title only as to income derived from sources within the United States,	509
¶414	and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources.	510

Porto Rico and Philippine Islands.

¶415	Sec. 261. That in Porto Rico and the Philippine Islands the income tax shall be levied, assessed, collected, and paid in accordance with the provisions of the Revenue Act of 1916 as amended.	511
¶416	Returns shall be made and taxes shall be paid under Title I of such Act in Porto Rico or the Philippine Islands, as the case may be, by	512
¶417	(1) every individual who is a citizen or resident of Porto Rico or the Philippine Islands or derives income from sources therein, and	513
¶418	(2) every corporation created or organized in Porto Rico or the Philippine Islands or deriving income from sources therein.	514
¶419	An individual who is neither a citizen nor a resident of Porto Rico or the Philippine Islands but derives income from sources therein, shall be taxed in Porto Rico or the Philippine Islands as a nonresident alien individual, and	515
¶420	a corporation created or organized outside Porto Rico or the Philippine Islands and deriving income from sources therein shall be taxed in Porto Rico or the Philippine Islands as a foreign corporation.	516
¶421	For the purposes of section 216 and of paragraph (6) of subdivision (a) of section 234 a tax imposed in Porto Rico or the Philippine Islands upon the net income of a corporation shall not be deemed to be a tax under this title.	517
¶422	The Porto Rican or Philippine Legislature shall have power by due enactment to amend, alter, modify, or repeal the income tax laws in force in Porto Rico or the Philippine Islands, respectively.	518

Law Paragraph | Repeated at ¶

TITLE XIII.—General Administrative Provisions.

(Of the Revenue Act of 1918.)

[Advisory Tax Board.]

¶423 Sec. 1301. (Revenue Act of 1918.) (a) . (b) . (c) . 2652

(d) (1) There is hereby created a board to be known as the "Advisory Tax Board," hereinafter called the Board, and to be composed of not to exceed six members to be appointed by the Commissioner with the approval of the Secretary. The Board shall cease to exist at the expiration of two years after the passage of this Act, or at such earlier time as the Commissioner with the approval of the Secretary may designate.

¶424 Vacancies in the membership of the Board shall be filled in the same manner as an original appointment. Any member shall be subject to removal by the Commissioner with the approval of the Secretary. The Commissioner with the approval of the Secretary shall designate the chairman of the Board. Each member shall receive an annual salary of $9,000, payable monthly, together with actual necessary expenses when absent from the District of Columbia on official business. 2653

¶425 (2) The Commissioner may, and on the request of any taxpayer directly interested shall, submit to the Board any question relating to the interpretation or administration of the income, war-profits or excess-profits tax laws, and the Board shall report its findings and recommendations to the Commissioner. 2654

¶426 (3) The Board shall have its office in the Bureau of Internal Revenue in the District of Columbia. The expenses and salaries of members of the Board shall be audited, allowed, and paid out of appropriations for collecting internal revenue, in the same manner as expenses and salaries of employees of the Bureau of Internal Revenue are audited, allowed, and paid. 2655

¶427 (4) The Board shall have the power to summon witnesses, take testimony, administer oaths, and to require any person to produce books, papers, documents, or other data relating to any matter under investigation by the Board. Any member of the Board may sign subpoenas and members and employees of the Bureau of Internal Revenue designated to assist the Board, when authorized by the Board, may administer oaths, examine witnesses, take testimony and receive evidence. 2656

[Leaves of Absence to Internal-Revenue Men.]

¶428 Sec. 1302. (Revenue Act of 1918.) That all internal-revenue agents and inspectors shall be granted leave of absence with pay, which shall not be cumulative, not to exceed thirty days in any calendar year, under such regulations as the Commissioner, with the approval of the Secretary, may prescribe. 2657

Law Paragraph | Repeated at ¶

[RECORDS TO BE KEPT; RETURNS TO BE MADE; BOOKS TO BE OPEN TO INSPECTION BY GOVERNMENT OFFICERS.]

¶429 Sec. 1305. (Revenue Act of 1918.) That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe. 1620

¶430 Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax. 1630

¶431 The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons. 1631

[TAX TO BE COLLECTED AS COMMISSIONER MAY PRESCRIBE IF NO METHOD IS SPECIFICALLY PROVIDED.]

¶432 Sec. 1307. (Revenue Act of 1918.) That in all cases where the method of collecting the tax imposed by this Act is not specifically provided in this Act, the tax shall be collected in such manner as the Commissioner, with the approval of the Secretary, may prescribe. . . . 592

[THE COMMISSIONER AUTHORIZED TO MAKE RULES AND REGULATIONS.]

¶433 Sec. 1309. (Revenue Act of 1918.) That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act. * * * 2591

[FRACTIONAL PARTS OF A CENT IN PAYMENT OF TAX.]

¶434 Sec. 1313. (Revenue Act of 1918.) That in the payment of any tax under this Act not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. 2426

[TREASURY CERTIFICATES OF INDEBTEDNESS AND UNCERTIFIED CHECKS IN PAYMENT OF TAXES.]

¶435 Sec. 1314. (Revenue Act of 1918.) That collectors may receive, at par with an adjustment for accrued interest, certificates of indebtedness issued by the United States and uncertified checks in pay- 2428

Law Paragraph | Repeated at ¶

(¶435) ment of income, war-profits and excess-profits taxes and any other (2428)
taxes payable other than by stamp, during such time and under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered.

[AMENDED SECTIONS OF THE REVISED STATUTES.]

[Comment: The following sections of the Revised Statutes, having directly to do with the administration of the Income Tax Law, are reprinted here because of the fact that they were amended by the Revenue Act of 1918. These sections, with the exception of section 3220 and sections 3164 and 3165, were carried into the Income Tax Title of the Revenue Act of 1916 as amended by the Revenue Act of 1917. They are no longer embodied in the Income Tax Law. Section 3173, Revised Statutes, heretofore carried in the Income Tax Law, was so amended by the Revenue Act of 1918 (Sec. 1317), as to make it inapplicable to the income tax, and for that reason it is not incorporated here.]

[REMISSION AND REFUNDING OF TAXES AND PENALTIES.]

¶436 Sec. 1316. (Revenue Act of 1918.) (a) That section 3220 of 2497
the Revised Statutes is hereby amended to read as follows:

"Sec. 3220. The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section."

[BURDEN OF PROOF AS TO FRAUD IN CONNECTION WITH SUITS TO RECOVER TAXES ON SECOND ASSESSMENT.]

¶437 (b) Section 3225 of the Revised Statutes of the United States is 2590
hereby amended to read as follows:

"Sec. 3225. When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, or recovered by any suit, unless it is proved that such list, statement, or return was not willfully false or fradulent and did not contain any willful understatement or undervaluation."

Law Paragraph | Repeated at ¶

¶438 Sec. 1317. (Revenue Act of 1918.) That sections 3164, 3165, 3167, 3172, 3173, and 3176 of the Revised Statutes as amended are hereby amended to read as follows:

[Duty of Collectors to Report Violations of Law.]

¶439 "Sec. 3164. It shall be the duty of every collector of internal revenue having knowledge of any willful violation of any law of the United States relating to the revenue, within thirty days after coming into possession of such knowledge, to file with the district attorney of the district in which any fine, penalty, or forfeiture may be incurred, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses, setting forth the provisions of law believed to be so violated on which reliance may be had for condemnation or conviction. 2651

[Revenue Officers Who May Administer Oaths.]

¶440 "Sec. 3165. Every collector, deputy collector, internal-revenue agent, and internal-revenue officer assigned to duty under an internal-revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal-revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken. 1452

[Disclosure of Information Made Available to Internal Revenue Officers.]

¶441 "Sec. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment. 2645

[Canvass of Districts by Collectors.]

¶442 "Sec. 3172. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects. 1621

"Sec. 3173. * * * * * * * * *

Law Paragraph | Repeated at ¶

[Penalties for Failure to Make Return and for False Returns.]

¶443 "Sec. 3176. If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, 1549

¶444 the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. 1550

¶445 In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. 1551

¶446 Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes. 1552

¶447 "If the failure to file a return or list is due to sickness or absence, the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper. 1501

¶448 "The Commissioner of Internal Revenue shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section. 1553

¶449 In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, 1554

¶450 except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. 1555

¶451 In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount. 1556

¶452 "The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax 1557

¶453 unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax." 1558

[Jurisdiction of U. S. District Courts.]

¶454 Sec. 1318. (Revenue Act of 1918.) That if any person is summoned under this Act to appear, to testify, or to produce books, papers or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by ap- 1632

Law Paragraph | Repeated at ¶

propriate process to compel such attendance, testimony, or production of books, papers, or other data.

¶455 The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions. 1633

[UNITED STATES BONDS IN LIEU OF SECURITIES, IN CONNECTION WITH "PENAL BONDS."]

¶456 Sec. 1320. (Revenue Act of 1918.) That wherever by the laws of the United States or regulations made pursuant thereto, any person is required to furnish any recognizance, stipulation, bond, guaranty, or undertaking, hereinafter called "penal bond", with surety or sureties, such person may, in lieu of such surety or sureties, deposit as security with the official having authority to approve such penal bond, United States Liberty bonds or other bonds of the United States in a sum equal at their par value to the amount of such penal bond required to be furnished, together with an agreement authorizing such official to collect or sell such bonds so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. The acceptance of such United States bonds in lieu of surety or sureties required by law shall have the same force and effect as individual or corporate sureties, or certified checks, bank drafts, post-office money orders, or cash, for the penalty or amount of such penal bond. The bonds deposited hereunder, and such other United States bonds as may be substituted therefor from time to time as such security, may be deposited with the Treasurer, or an Assistant Treasurer of the United States, a Government depository, Federal Reserve bank, or member bank, which shall issue receipt therefor, describing such bonds so deposited. As soon as security for the performance of such penal bond is no longer necessary, such bonds so deposited, shall be returned to the depositor: *Provided*, * * * . 2220

¶457 *Provided further, That nothing herein contained shall affect or impair the priority of the claim of the United States against the bonds deposited or any right or remedy granted by said Acts or by this section to the United States for default upon any obligation of said penal bond:* 2221

¶458 *Provided further, That all laws inconsistent with this section are hereby so modified as to conform to the provisions hereof:* 2222

¶459 *And provided further, That nothing contained herein shall affect the authority of courts over the security, where such bonds are taken as security in judicial proceedings, or the authority of any* 2223

Law Paragraph | Repeated at ¶

administrative officer of the United States to receive United States bonds for security in cases authorized by existing laws.

¶460 The Secretary may prescribe rules and regulations necessary and proper for carrying this section into effect. 2224

TITLE XIV.—GENERAL PROVISIONS.

(Of the Revenue Act of 1918.)

[Repeal of Prior Laws.]

¶461 Sec. 1400. (Revenue Act of 1918.) (a) That the following parts of Acts are hereby repealed, subject to the limitations provided in subdivision (b): 2361

(1) The following titles of the Revenue Act of 1916:
Title I (called "Income Tax");

* * * * * * * * *

(2) The following parts of the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917:

* * * * * * * * *

Section 402 (called "Returns of Dividends").

(3) The following titles of the Revenue Act of 1917:
Title I (called "War Income Tax");

* * * * * * * * *

Title X (called "Administrative Provisions");
Title XII (called "Income-Tax Amendments").

¶462 (b) Such parts of Acts shall remain in force for the assessment and collection of all taxes which have accrued thereunder, and for the imposition and collection of all penalties or forfeitures which have accrued and may accrue in relation to any such taxes, and except that the unexpended balance of any appropriation heretofore made and now available for the administration of any such part of an Act shall be available for the administration of this Act or the corresponding provision thereof: *Provided*, That, except as otherwise provided in this Act, no taxes shall be collected under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917, or Title I or II of the Revenue Act of 1917, in respect to any period after December 31, 1917: * * * * * * * * 2362

¶463 In the case of any tax imposed by any part of an Act herein repealed, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act. 2363

¶464 Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 shall remain in force for the assessment and collection of the income tax in Porto Rico and the Philippine Islands, except as may be otherwise provided by their respective legislatures. 519

Law Paragraph | Repeated at ¶

[Invalidating Clause.]

¶465 Sec. 1402. (Revenue Act of 1918.) That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment has been rendered. 2667

[Short Titles.]

¶466 Sec. 1403. (Revenue Act of 1918.) That the Revenue Act of 1916 is hereby amended by adding at the end thereof a section to read as follows: 481

"Sec. 903. That this Act may be cited as the 'Revenue Act of 1916'."

¶467 Sec. 1404. (Revenue Act of 1918.) That the Revenue Act of 1917 is hereby amended by adding at the end thereof a section to read as follows: 483

"Sec. 1303. That this Act may be cited as the 'Revenue Act of 1917'."

¶468 Sec. 1405. (Revenue Act of 1918.) That this Act may be cited as the "Revenue Act of 1918." 484

[Effective Date.]

¶469 Sec. 1409. Revenue Act of 1918.) That unless otherwise herein specially porvided, this Act shall take effect on the day following its passage. 2823

Comment.—[The provisions of Title XIII and Title XIV, so far as reproduced above, there being no specific provision to the contrary, became effective on the day following "the passage" of the Act, that is on February 25, 1919, the day after approval by the President.]

Approved by the President, February 24, 1919, at 6.55 P. M.

¶470 For ¶470 see page 55.

Law Paragraph | Repeated at ¶

administrative officer of the United States to receive United States bonds for security in cases authorized by existing laws.

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Law Paragraph | Repeated at ¶

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[Short Titles.]

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Approved by the President, February , 1919.

¶470 For ¶470 see page 55.

The Compilation

INCOME TAX LAW
AND
REGULATIONS.

INDIVIDUALS.

470 **Persons Paying Income Taxes to Other Countries.**—American citizens, whether residing at home or abroad, resident aliens, and non-resident aliens receiving income from property owned and from business, trade, or profession carried on within the United States, all of whom are subject to the income-tax law of October 3, 1913, are not relieved from tax liability under that act by reason of the fact that they are also subject to the income-tax laws of other countries. [See credit for such taxes at **¶1059.**] (T. D. 2152, February 12, 1915.)

471 Law **¶75. Normal Tax.**—"Sec. 210. That, in lieu of the taxes imposed by subdivision (a) of section 1 [Normal tax on individuals] of the Revenue Act of 1916 and by section 1 [War-normal tax on individuals] of the Revenue Act of 1917, there shall be levied, collected, and paid for each taxable year upon the net income [for "net losses" read at **¶1913**] of every individual a normal tax at the following rates:" [Read at **¶2825**]

472 Law ¶76. **Rates for 1918.**—"(a) For the calendar year 1918, 12 per centum of the amount of the net income in excess of the credits provided in section 216 [¶1124]:"

473 Law ¶77. **Special 1918 Rate for Citizens and Residents.**—"*Provided*, That in the case of a citizen or resident of the United States the rate upon the first $4,000 of such excess amount shall be 6 per centum;"

Application of Rates for Fiscal Year Embracing Parts of Calendar Years with Differing Rates.—[Read at ¶1678.]

474 Law ¶78. **Rates for 1919.**—"(b) For each calendar year thereafter, 8 per centum of the amount of the net income in excess of the credits provided in section 216 [¶1124]:"

475 Law ¶79. **Special 1919 Rate for Citizens and Residents.**—"*Provided*, That in the case of a citizen or resident of the United States the rate upon the first $4,000 of such excess amount shall be 4 per centum."

476 Law ¶17. **"Taxable Year" Defined.**—"Sec. 200. That when used in this title—"

477 Law ¶18. "The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under section 212 [individuals, ¶754] or section 232 [corporations, ¶1787]."

478 Law ¶19. **"Fiscal Year" Defined.**—"The term "fiscal year" means an accounting period of twelve months ending on the last day of any month other than December."

479 Law ¶20. **The Taxable Year 1918.**—"The first taxable year, to be called the taxable year 1918, shall be the calendar year 1918 or any fiscal year ending during the calendar year 1918;"

480 Law ¶10. **"Revenue Act of 1916" Identified.**—"The term 'Revenue Act of 1916' means the Act entitled 'An Act to increase the revenue, and for other purposes,' approved September 8, 1916;"

481 Law ¶466. "Sec. 1403. That the Revenue Act of 1916 is hereby amended by adding at the end thereof a section to read as follows:"

"Sec. 903. That this Act may be cited as the 'Revenue Act of 1916'."

482 Law ¶11. **"Revenue Act of 1917" Identified.**—"The term 'Revenue Act of 1917' means the Act entitled 'An Act to provide revenue to defray war expenses, and for other purposes,' approved October 3, 1917;"

483 Law ¶467. "Sec. 1404. That the Revenue Act of 1917 is hereby amended by adding at the end thereof a section to read as follows:"

"Sec. 1303. That this Act may be cited as the 'Revenue Act of 1917'."

484 Law ¶468. **"Revenue Act of 1918" Identified.**—"Sec. 1405. That this Act may be cited as the 'Revenue Act of 1918'."

485 **Citizenship.**—Determination by State Department of right to registry is not conclusive upon the Treasury in fixing citizenship for income tax purposes. Held that native and naturalized status remains unless changed by affirmative action or forfeited by overt act. (T. D. 2135, January 23, 1915.)

486 **Non-Resident Citizens Against Whom the Presumption of Expatriation Has Arisen.**—The Department has received several inquiries concerning the payment of the income tax under the provision of Section 2 of the Act of October 3, 1913, by persons residing abroad who claim American Citizenship. These inquiries involve particularly two questions: (1) Whether a naturalized American citizen who has brought upon himself the presumption of expatriation, under the provision of the second paragraph of Section 2 of the Act of March 2, 1907, by protracted residence abroad, and has failed to overcome such presumption under the established rules is required to pay the income tax as an American citizen, and (2) whether a naturalized American citizen residing abroad can overcome the presumption of expatriation by payment of the income tax.

487 The question as to the liability of a particular person to pay the income tax must be determined not by this Department but by the Treasury Department, under which the income tax law is administered. Persons making inquiry concerning this point should, therefore, be advised to apply to the Treasury Department for information.

488 With reference to the second inquiry mentioned above your attention is called to the fact that naturalized citizens of the United States who have brought upon themselves the presumption of expatriation, under the provision of the second paragraph of Section 2 of the Act of March 2, 1907, by protracted residence abroad, may overcome such presumption only upon presenting "satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe." The Department has not prescribed a rule that the presumption of expatriation arising under the law mentioned may be overcome by showing that the person concerned has paid, or is ready to pay, the income tax of the United States. However, if a person against whom the presumption of expatriation has arisen presents, in connection with an application for a passport, or for registration in a consulate or for actual protection, evidence that he has paid the income tax, this fact will receive due consideration in connection with other evidence submitted to overcome the presumption of expatriation under the established rules, and particularly with regard to the question of the intent to return to this country to reside. The payment of the income tax will also be duly considered in deciding the question of the right to the continued protection of this Government in cases of native American citizens who have resided abroad for a period so long that the natural presumption may be held to have arisen that they have abandoned this country. (Letter to the American Diplomatic and Consular Officers, signed by W. J. Bryan, Secretary of State, and dated March 18, 1914.)

489 **Resident Aliens.**—"Residence," as used in Subdivision 1, Paragraph A of the Act of October 3, 1913 * * * , is held to be—

"That place where a man has his true, fixed and permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning; and indicates permanency of occupation as distinct from lodging or boarding, or temporary occupation."

490 For the purposes of the income tax,—it is held that where for business purposes or otherwise, an alien is permanently located in the United States; has there his principal business establishment and is there permanently occupied or employed, even though his domicile may be without the United States he will be held to be within the definition of—

"Every person residing in the United States, though not a citizen thereof * * * " (T. D. 2242, September 17, 1915.)

491 **Aliens Coming to the United States with the Intention of Becoming Permanent Residents Thereof.**—Aliens coming to the United States with the intention of becoming residents thereof within the meaning and intent of the income tax statute, may establish that fact and have the privilege of resident aliens under the statute by filing with withholding agents a certificate in the following form [Form 1078] under oath, and which certificate shall be filed by said withholding agents with Collectors of Internal Revenue as justification for withholding on the basis of "residence" in the United States. (T. D. 2242, September 17, 1915.)

[Read at ¶2828 and ¶2973.]

492 **American Wife of a Nonresident Alien.**—An American woman who marries a foreigner takes the nationality of her husband * * * . (T. D. 2090, December 14, 1914.)

493 **Aliens Temporarily Living in the United States.**—"Residence," as used in Subdivision 1, Paragraph A of the Act of October 3, 1913, is held to be—

"That place where a man has his true, fixed and permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning; and indicates permanency of occupation as distinct from lodging or boarding, or temporary occupation."

494 For the purposes of the income tax,—it is held that * * * aliens who are physically present in the United States, but only temporarily resident or employed therein (as for a season or other similarly definite term, and with the expectation or intention of leaving the United States upon the termination of employment or accomplishment of the purpose which necessitated presence in the United States), are within the class of—

"Persons residing elsewhere * * * ." [Read ¶490.] (T. D. 2242, September 17, 1915.)

495 **Liability of Nonresident Aliens Under the Law.**—Income derived by nonresident aliens from sources in the United States is subject to the normal or additional tax, or both, as the case may be * * * . (Art. 32, ¶219, Reg. 33, Rev., January 2, 1918.)

496 Nonresident aliens are held to be subject to the liabilities and requirements of all administrative, special, and general provisions of law in relation to the assessment, remission, collection, and refund of the income tax imposed by the act of October 3, 1913, and collectors of internal revenue will make collection of the tax by distraint, garnishment, execution, or other appropriate process provided by law. (T. D. 2313, March 21, 1916.)

497 Law ¶75. **Normal Tax on Nonresident Aliens.**—"Sec. 210. That, in lieu of the taxes imposed by subdivision (a) of section 1 of the Revenue Act of 1916 [Normal income tax on individuals] and by section 1 of the Revenue Act of 1917 [War-normal tax on individuals: did not apply to nonresident aliens], there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax at the following rates:"

498 Law ¶76. **For the Calendar Year 1918.**—"(a) For the calendar year 1918, 12 per centum of the amount of the net income in excess of the credits provided in section 216 [¶1124]:"

499 Law ¶78. **For Calendar Years Subsequent to 1918.**—"(b) For each calendar year thereafter, 8 per centum of the amount of the net income in excess of the credits provided in section 216 [¶1124]:"

500 Law ¶80. **Surtax on Nonresident Aliens.**—"Sec. 211. (a) That, in lieu of the taxes imposed by subdivision (b) of section 1 of the Revenue Act of 1916 [Surtax on individuals] and by section 2 of the Revenue Act of 1917 [Surtax on individuals], but in addition to the normal tax imposed by section 210 [¶497] of this Act, there shall be levied, collected, and paid for each taxable year upon the net income of every individual, a surtax equal to the sum of the following: [Rates same as for citizens and residents, for which see ¶737.]"

501 Law ¶83. **Net Income of Nonresident Aliens Defined.**—"Sec. 212. (a) That in the case of an individual the term "net income" means the gross income as defined in section 213 [¶763], less the deductions allowed by section 214 [¶1019]."

502 Law ¶84. **Annual Accounting Period for Nonresident Aliens (Fiscal Year or Calendar Year as the Case May Be).**—Sec. 212. (b). [Same as for citizens and residents for which see ¶754.]

503 Law ¶109. **Gross Income of Nonresident Aliens.**—Sec. 213. (a). (b). [Same as for citizens and residents for which see ¶763, except that]—"(c) In the case of nonresident alien individuals, gross income includes only the gross income from sources within the United States."

504 **Royalties Received by Nonresident Aliens.**—Royalties paid to nonresident alien under an agreement of purchase of certain patent rights, the payment being based upon the quantity of goods produced by the use of such patents, are held to be income

accruing to nonresident aliens by reason of property owned or business carried on within the United States; and * * * . (T. D. 2137, January 30, 1915.)

505 Law ¶110. **Interest on Domestic Securities and Dividends on Domestic Stock as Gross Income of Nonresident Aliens.**—"including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, dividends from resident corporations, and"

506 Under the decision of the Supreme Court of the United States in the case of Brushaber *v.* Union Pacific Railway Co., decided January 24, 1916 [¶2685], it is hereby held that income accruing to nonresident aliens in the form of interest from the bonds and dividends on the stock of domestic corporations is subject to the income tax imposed by the Act of October 3, 1913 [which provided in the case of nonresident aliens that the income tax was to be assessed "upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States"]. (T. D. 2313, March 21, 1916.]

507 The individual liability of nonresident aliens for tax on interest from bonds and dividends on stock of domestic corporations, and for return and payment thereof to the Government under Section 2 of the Act of October 3, 1913, will be held effective as of January 1, 1916. (T. D. 2317, April 4, 1916.)

508 Law ¶111. **Profits on the Manufacture and Disposition of Goods Within the United States as Gross Income of Nonresident Aliens.**—"including all amounts received (although paid under a contract for the sale of goods or otherwise) representing profits on the manufacture and disposition of goods within the United States." [¶2876]

509 Law ¶413. **The Income of a Citizen of Any Possession of the United States Who Is Not a Resident of the United States, is Taxed Under This Title on Income Derived From United States Sources Only, the Tax Being Computed and Paid in the Same Manner and Subject to the Same Conditions as in the Case of Other Persons Liable on Such Income Only.**—"Sec. 260. That any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States, shall be subject to taxation under this title only as to income derived from sources within the United States," [¶3069.]

510 Law ¶414. "and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources."

511 Law ¶415. **Income Taxes in Porto Rico and the Philippine Islands.**—"Sec. 261. That in Porto Rico and the Philippine Islands the income tax shall be levied, assessed, collected, and paid in accordance with the provisions of the Revenue Act of 1916 as amended." [¶3070.]

512 Law ¶416. "Returns shall be made and taxes shall be paid under Title I of such Act in Porto Rico or the Philippine Islands, as the case may be, by"

513 Law ¶417. "(1) every individual who is a citizen or resident of Porto Rico or the Philippine Islands or derives income from sources therein, and"

514 Law ¶418. "(2) every corporation created or organized in Porto Rico or the Philippine Islands or deriving income from sources therein."

515 Law ¶419. "An individual who is neither a citizen nor a resident of Porto Rico or the Philippine Islands but derives income from sources therein, shall be taxed in Porto Rico or the Philippine Islands as a nonresident alien individual,"

516 Law ¶420. "and a corporation created or organized outside Porto Rico or the Philippine Islands and deriving income from sources therein shall be taxed in Porto Rico or the Philippine Islands as a foreign corporation."

517 Law ¶421. "For the purposes of section 216 [¶1125] and of paragraph (6) [¶2102] of subdivision (a) of section 234 a tax imposed in Porto Rico or the Philippine Islands upon the net income of a corporation shall not be deemed to be a tax under this title."

518 Law ¶422. "The Porto Rican or Philippine Legislature shall have power by due enactment to amend, alter, modify, or repeal the income tax laws in force in Porto Rico or the Philippine Islands, respectively."

519 Law ¶464. "Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 shall remain in force for the assessment and collection of the income tax in Porto Rico and the Philippine Islands, except as may be otherwise provided by their respective legislatures."

520 **Sale of Stock.**—When a nonresident alien who owns stock in an American corporation disposes of same by sale, the sale and delivery being made within the United States, the profit will be held to have been derived from sources within the United States and is to be included for the purposes of income tax. (Art. 4, ¶62, Reg. 33, Rev., Jan. 2, 1918.)

521 **Income From United States Sources Received through Foreign Partnership.**—The income received by a nonresident alien partnership from sources within the United States does not lose its identity as to source when distributed to a nonresident alien member of the firm. Therefore, the nonresident alien member will be required to file a return on Form 1040 or 1040A, as the case may be, and shall include therein his distributive share of the taxable profits from sources within the United States. (Part of letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated October 1, 1918.)

522 **Profits Accruing to Nonresident Alien Partnerships on Sale of Stock Negotiated Through Domestic Bankers.**—This office has before it your letter of October 28, 1916. It appearing from paragraph (*e*) of your letter that the foreign banking house referred to is a copartnership, the following answers are returned to your several inquiries:

"A foreign banking house buys through a domestic banking house 1,000
523 shares of stock and sells the stock with a profit of $30,000. (*a*) Is this profit taxable? (Answer) Yes.

524 (*b*) Should the domestic firm retain the normal tax? (Answer) No.

(*c*) How can a foreign firm be made to render a tax return and pay the tax,
525 it being assumed that the domestic firm or agent holds no property for account of the foreign firm after the transaction is completed? (Answer) The Government will proceed, under the general provisions of the law, to take all steps necessary to secure a required return, or to itself prepare one, and a collection of the amount of tax assessed against that return.

(*d*) If the foreign firm does not render a return, will the domestic firm be held
526 responsible for the tax and supertax, if any? (Answer) The foreign firm itself is not required [under the law as it then was] to render an income tax return covering its own net income unless specifically requested to do so by the Commissioner of Internal Revenue or a Collector of Internal Revenue. Whether or not the domestic firm which has acted as agent for the foreign firm would be required to render a return in the event that the latter refused to do so, would be determined by the facts in the case.

(*e*) The foreign firm has several partners. Is the $30,000 to be considered
527 an entity for the purpose of supertax or may the several partners declare their proportionate shares in the amount?" (Answer) Income Tax is not computed upon the amount of net income derived by a foreign partnership from sources within the United States, but upon the individual share of each member in such net income. (Letter to The Corporation Trust Company, signed by Commissioner W. H. Osborn, and dated Dec. 6, 1916.)

528 **Exempt Income.**—Nonresident aliens will not be required to make return of any of the classes of income specified by section 4, act of September 8, 1916, as amended, and received by them from sources in the United States. (Art. 32, ¶220, Reg. 33, Rev., Jan. 2, 1918.) [¶2877.]

529 Law ¶149. **Deductions Allowed to Nonresident Aliens.**—"Sec. 214. (b) In the case of a nonresident alien individual the deductions allowed in paragraphs (1) [¶1020], (4) [¶1066], (7) ¶1088], (8) [¶1089], (9) [¶1093], (10) [¶1096], (12) [¶1119], and clause (c) of paragraph (3) [¶533], of subdivision (a) shall be allowed only if and to the extent that they are connected with income arising from a source within the United States;"

530 Law ¶150. **Apportionment and Allocation of Deductions.**—"and the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary." [¶2964.]

531 Law ¶118. **Interest Deductible by a Nonresident Alien.**—"Sec. 214. (a) (2) [¶1049]—or, in the case of a nonresident alien individual, the proportion of such interest which the amount of his gross income from sources within the United States

bears to the amount of his gross income from all sources within and without the United States;"

Second. The proportion of interest paid by him within the year applicable in
532 ascertaining his net income from all sources within the United States, ascertained in accordance with rule prescribed in this paragraph (except interest on indebtedness incurred for purchase of obligations or securities, the interest on which is exempt from income tax), viz.: Multiply interest paid on entire indebtedness from all sources by quoient arising from dividing gross income from sources within the United States by gross income from all sources within and without the United States, but this deduction shall be allowed only if such person shall include in his return all the information necessary for its calculation. (Art. 10, ¶131, Reg. 33, Rev., Jan. 2, 1918.)

533 Law ¶125. **Taxes Deductible by a Nonresident Alien.**—"Sec. 214. (a) (3) [Taxes set forth in ¶1053, ¶1054, and ¶1055, and in addition thereto] (e) in the case of a nonresident alien individual, by the authority of any foreign country (except income, war-profits and excess-profits taxes, and taxes assessed against local benefits of a kind tending to increase the value of the property assessed), upon property or business;"

534 Law ¶128. **Losses Incurred in Transactions Entered Into for Profit Outside of Business Deductible by Nonresident Aliens.**—"Sec. 214 (5) [¶1084]—but in the case of a nonresident alien individual only as to such transactions within the United States;"

535 Law ¶130. **Property Losses Outside of Business Deductible by Nonresident Aliens.**—"Sec.214(a)(6) [¶1085]—(but in the case of a nonresident alien individual only property within the United States)"

536 Law ¶143. **Contributions to Religious, Charitable, Educational, etc., Activities are Deductible to a Limited Amount.**—"Sec.214(b)(11) [¶1102]—In the case of a nonresident alien individual this deduction shall be allowed only as to contributions or gifts made to domestic corporations, or to such vocational rehabilitation fund;"

537 Law ¶164. **Specific Exemption Allowed to Nonresident Aliens.**—"Sec. 216 (e)—In the case of a nonresident alien individual who is a citizen or subject of a country which imposes an income tax, the credits allowed in subdivisions (c) [¶]1128 and (d) [¶1138] shall be allowed only if such country allows a similar credit to citizens of the United States not residing in such country." [¶2972.]

538 Law ¶165. **Deductions and Credits Allowed Conditionally.**—"Sec. 217. That a nonresident alien individual shall receive the benefit of the deductions and credits allowed in this title only by filing or causing to be filed with the collector a true and accurate return of his total income received from all sources corporate or otherwise in the United States, in the manner prescribed by this title, including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits;"

[Read at ¶2973.]

539 A nonresident alien may have the benefit of the deductions and credits above provided only by filing or causing to be filed with the collector of internal revenue a true and accurate return of his total income received from all sources, corporate or otherwise, in the United States. In case of failure to file return the tax is to be collected on the gross income from all sources in the United States. (Art. 12, ¶141, Reg. 33, Rev., Jan. 2, 1918.)

540 Returns should be rendered to the collector of internal revenue for the district in which a nonresident alien carries on his principal business within the United States or, in the absence of a principal business within the United States and in all cases of doubt, to the collector of internal revenue at Baltimore, Md., in whose district Washington is situated. (T. D. 2313, Mar. 21, 1916.)

541 Law ¶166. **Specific Exemption May be Claimed at the Source.**—"*Provided*, That the benefit of the credits allowed in subdivisions (c) [¶1128] and (d) [¶1138] of section 216 may, in the discretion of the Commissioner, and except as otherwise provided in subdivision (e) [¶537] of that section, be received by filing a claim therefor with the withholding agent." [Privilege not granted, see ¶2977.]

542 Law ¶167. **Property of Nonresident Alien Subject to Distraint for the Tax.** "Sec. 217.—In case of failure to file a return, the collector shall collect the tax on such income, and all property belonging to such nonresident alien individual shall be liable to distraint for the tax."

543 When all income tax to which income of a nonresident alien is subject is not withheld at the source, a return of income will be required to be filed by or on behalf of said nonresident alien, and penalty for failure to make return in time will attach. All property in the United States of a nonresident alien will be subject to distraint for collection of tax and penalty. (Art. 13, ¶142, Reg. 33, Rev., Jan. 2, 1918.)

544 **Nonresident Alien Beneficiary.**—Where a fiduciary in the United States is the recipient of trust income for which there is but one beneficiary and that beneficiary a nonresident alien, the fiduciary will be required to make full and complete return on Income Tax Form 1040 or 1040 A, as the case may be, for this trust income on behalf of the nonresident alien and pay any and all tax found by such return to be due. Where there are two or more beneficiaries, one or all of whom are nonresident aliens, the fiduciary shall render a return on Form 1041, and a personal return on Form 1040 or 1040 A for each nonresident alien beneficiary. (Art. 29, ¶200, Reg. 33, Rev., Jan. 2, 1918.)

545 Where the beneficiary is a nonresident alien individual the tax imposed by the act of Sept. 8, 1916, as amended, and the act of Oct. 3, 1917, is to be accounted for by such fiduciary on a return of income for such nonresident alien beneficiary on Income Tax Form 1040 or 1040 A, as the case may be. (Art. 28, ¶187, Reg. 33, Rev., Jan. 2, 1918.)

546 **Liability of Foreign Fiduciaries for Non-Resident Alien Beneficiaries in Connection with Income Received from Sources Within the United States.**—Receipt is acknowledged of your letter of December 1, 1916, reading as follows:

"A trust company in Canada holds certain bonds of American corporations for estates, trusteeships, etc. Is it necessary for the corporation to file the annual return Form No. 1041, Revised? If so, what deductions will it be allowed against income received from the United States * * *? What form of ownership certificates shall such corporation file in order to obtain exemption from deduction at the source if it stipulates and agrees to file the annual return and account for the tax annually on payments made to beneficiaries?"

In reply you are advised that if the foreign trust company has charge of an estate
547 or trust, the net income of which is distributed annually or periodically among nonresident alien beneficiaries, the fiduciary should execute a return on Form 1041, Revised, covering the total income of the estate or trust derived from sources within the United States, and a personal return on Form 1040 (* * * *) in behalf of each nonresident alien beneficiary, * * * .

If the fiduciary has charge of an estate in process of administration or settlement,
548 or an estate or trust the net income of which is held in trust for the benefit of unborn or unascertained persons, or for future distribution under the terms of a will or trust, the estate or trust will be considered a taxable entity and the fiduciary required to render a return on Form 1040 (* * *) covering so much of its total income as is derived from sources within the United States, * * *

Whether the return of the total income derived by the estate or trust from sources
549 within the United States is made on Form 1040 (* * *) or 1041, Revised, the benefit of such of the deductions enumerated in Section 6 of the Act of Sept. 8, 1916, as the estate or trust is entitled to may be claimed.

No form of exemption certificate has been prescribed for the use of a foreign
550 fiduciary, as it is not permitted, under the law, that such a fiduciary may assume liability for payment of the income tax found to be due on income derived by the estate or trust from sources within the United States and subject to withholding of normal tax at the source. Interest coupons detached from domestic bonds should be accompanied by ownership certificates, Form [1000], Revised, when presented for payment or collection by a foreign fiduciary, and the interest paid on such coupons will be subject to withholding of normal tax at the source, * * * . (Letter to The Corporation Trust Company, signed by Commissioner W. H. Osborn, and dated Dec. 28, 1916.)

When a Broker is not the Agent, for Income Tax Purposes, of a Nonresident Alien
551 **Client.**—This office is in receipt of your letter of Mar. 7, 1918, in which you ask what constitutes an agent or representative in this country in charge of property of a nonresident alien, and by way of illustration you submit the following statement: "I have in mind the ordinary relation of broker and client. The non-resident alien client maintains an account with a broker, occasionally buying some securities on margin and selling some from time to time; interest is charged on balances due and dividends as paid on the stocks carried are credited to the account. All dealings are in response to direction from the customer. Is the broker in such case, agent or representative of the alien so that he must make a return in behalf of the customer and become responsible for normal taxes and sur-taxes on all income and profits passing through his hands?" ¶In reply you are advised that the facts set forth in this statement do not constitute the relationship of agency between these parties to an extent which will make the broker responsible for filing the return for the non-resident client. The broker in such case, however, for the

purposes of the income tax is considered the withholding agent and should withhold the 2% [8%] normal tax and the nonresident alien should file a return on Form 1040 B, including all income received from sources in the United States. (Letter to Henry W. Beal, Boston, Mass., signed by Deputy Commissioner L. F. Speer, and dated April 17, 1918.)

552 **Manner of Payment of Tax by Nonresident Aliens.**—[For payment by uncertified checks and Treasury Certificates of Indebtedness, see ¶2428]. Your letter of the 28th instant has been received, in which you ask whether the Collector at Baltimore in the case of nonresident aliens having no agents or representatives in the United States, is authorized

(a) To accept drafts of foreign banks on banks in Baltimore.
(b) To accept drafts on national banks only, and not on state or private institutions.
(c) To accept drafts of foreign banks on national banks of New York City.
(d) To accept drafts of New York City national banks on national banks in Baltimore.
(e) To accept cashiers' checks to his order issued by New York City national banks.

In reply you are advised that this office can not authorize any departure from the requirements of the law, which are that internal-revenue taxes are payable in cash, certified checks drawn in favor of collectors on national or State banks or trust companies located in cities where the respective collectors deposit their collections, or such "out-of-town" certified checks as can be cashed without expense to the Government. * * * * There would be no objection to the collector's accepting such drafts and checks if the depositaries will accept them "without recourse" and issue therefor regular certificates of deposit on Form 15, as the responsibility would then appear to be shifted from the collector to the depositary; and there would be no objection to the collector's accepting them for collection only—that is, he would issue no receipt for the payment of taxes until such drafts and checks had been paid and he had been notified thereof. * * * * A copy of this letter is being sent to Collector Miles, District of Maryland, for his information. (Letter to The Corporation Trust Company, signed by Deputy Commissioner G. E. Fletcher, and dated Mar. 31, 1917.)

553 Law ¶201. **Payment of Tax at the Source on Account of Nonresident Aliens.**—"Sec. 221. (a) That all individuals, corporations and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States," [¶2996.]

554 Law ¶202. "having the control, receipt, custody, disposal, or payment, of interest,* rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income,"

*** Payment at the source, of tax on interest on corporate obligations.**—[Read at ¶601.]

555 Law ¶203. "of any nonresident alien individual"

556 Law ¶204. "(other than income received as dividends from a corporation which is taxable under this title upon its net income)"

557 Law ¶205. "shall (except in the cases provided for in subdivision (b) [¶604] and except as otherwise provided in regulations prescribed by the Commissioner under section 217 [¶541])"

558 Law ¶206. "deduct and withhold from such annual or periodical gains, profits, and income"

559 Law ¶207. "a tax equal to 8 per centum thereof:"

560 **No Deduction at the Source on Dividends.**—This office is in receipt of your letter of April 8, 1916. You state a case as follows:

"Banks and bankers in the United States hold as depositary shares of stock of corporations organized in the United States and which shares are owned by nonresident foreign banks and bankers, and in many cases it so happens that the shares of stock held by the United States bankers for the account of foreign banks and bankers are owned by a third nonresident party.

You ask:

"Will it be necessary for the American banker to withhold the tax on these dividends and will it be necessary for the United States bankers to render a return for the fiscal year in which these disbursements are made?"

561 * * * Dividends paid from the net earnings of corporations, joint stock companies or associations and insurance companies taxable upon their net income, as provided in the Income Tax Law are taxable to individuals only for the "additional tax." It, therefore, follows:

(1) Dividends, such is above described, are not subject to the withholding provisions of the Income Tax Law * * * .

562 * * * The nonresident alien individual * * * owning the stock aforesaid will be chargeable with such tax as may be assessable upon the dividends on said stock. They will be subject to all the provisions of the law and regulations for making return and paying tax and for failure to comply with the requirements of the law and regulations, the stock and any other property they may have in the United States will be subject to distraint, garnishment, execution or other appropriate process provided by law. (Letter to The Corporation Trust Company, signed by Acting Commissioner David A. Gates, and dated April 10, 1916.)

563 **No Deduction at Source on Salaries for Service Rendered Abroad or on Rent on Property Located Abroad.**—It is held that salaries, wages, commissions, and rents paid by domestic corporations, resident individuals, or partnerships to nonresident alien employees for services rendered entirely in a foreign country and for property located in a foreign country are not subject to deduction and withholding of the normal tax and such payments of income will not be subject to the income tax in the hands of the recipient as from a source within the United States. (Art. 32, ¶221, Reg. 33, Rev., Jan. 2, 1918.) [¶2877.]

564 **Other Items Upon Which Tax Is Not To Be Withheld at the Source.**—[The tax shall not be withheld at the source on the] Proceeds of life insurance policies paid upon the death of the person insured, or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon the surrender of contract—all of which shall not be included as income under this law—but this shall not be construed to exempt said insurance companies from withholding and paying the normal tax of 1 [8] per cent on interest income paid by insurace companies to beneficiaries of policies * * * . (T. D. 1890, Oct. 31, 1913.)

565 Income of an individual which is not fixed or certain and not payable at stated periods, or is indefinite or irregular as to amount or time of accrual, shall not be withheld at the source, but *shall be listed in the annual return of the individual*, and the tax shall be paid thereon by him. (T. D. 1890, Oct. 31, 1913.)

566 Agents compensated on the commission basis, lawyers, doctors, authors, inventors, and other professional persons whose income is irregular and indefinite. (Art. 32, Reg. 33, Jan. 5, 1914.)

567 When indefinite as to amount and time of accrual, they [commissions to salesmen] are not subject to withholding. (T. D. 2090, Dec. 14, 1914.)

568 The value of property acquired by gift, bequest, devise, or descent.

569 Interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; * * * . (T. D. 1890, Oct. 31, 1913.)

570 Payments in connection with (1) quarters, (2) heat and light, (3) mileage, (4) reimbursement for actual expenses, and (5) per diem allowances in lieu of subsistence while traveling under orders are indefinite and irregular as to right of possession, amount, and time of accrual; and are not, therefore, subject to withholding as "fixed or determinable annual or periodical gains, profits, and income" under the requirements of the Income Tax Law. (T. D. 2079, Nov. 24, 1914.)

571 Receipt is acknowledged of your letter of March 2, 1916, and in reply you are advised that the office holds that in all cases where rental or royalties accrue under the terms of a lease or agreement which grants to the lessee the use of certain lands and a right to mine or produce and remove therefrom any natural deposit, upon payment of rental fixed and determinable as to amount and time of payment, or of royalties based on a certain fixed sum, or certain fixed percentage of value, per ton, barrel, or other unit of measure, payments of such rental or royalties, when they, in part, represent a partial return of the capital originally invested in the lands, will not be subject to withholding of the normal tax at the source. (Letter to The Corporation Trust Company, signed by Commissioner W. H. Osborn, and dated Mar. 10, 1916.)

572 Law ¶332. **Payment of Tax at the Source on Account of Certain Foreign Corporations.**—"Sec. 237. That in the case of foreign corporations subject to taxation under this title not engaged in trade or business within the United States and not having any office or place of business therein," [Read at ¶2996.]

573 Law ¶333. "there shall be deducted and withheld at the source in the same manner and upon the same items of income* as is provided in section 221 [¶553]"

574 Law ¶334. "a tax equal to 10 per centum thereof,"

575 Law ¶335. "and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section:"

*Payment at the Source of Tax, on Interest on Corporate Obligations.—[Read at ¶601.]

576 **Foreign Corporations Engaged in Business in the United States to file Certificate Establishing That Fact.**—[In the case of bond interest, see ¶651. The following is included here because of its possible application in connection with the withholding of the tax on miscellaneous income payments to foreign corporations.]

Under the Act of September 8, 1916, the normal income tax is to be withheld at
577 sources of income in the United States, from the income of [foreign] corporations, "not engaged in trade or business within the United States and not having any office or place of business therein."

[One form of] income of such nonresident alien corporations, etc., which is subject
578 to the withholding provisions of the law is that derived from "interest on bonds and mortgages or deeds of trust or similar obligations of domestic or other resident corporations, joint stock companies or associations, and insurance companies," regardless of amount.

To enable debtor corporations, etc., in the United States to distinguish between
579 nonresident alien corporations, etc., which have and those which do not have "*any office or place of business*" in the United States and also to enable such nonresident alien corporations, etc., as have an "office or place of business" in the United States, to claim exemption from withholding of the normal income tax at the source on their income from sources within the United States as specified by the statute, a certificate will be provided in the following form: (Form 1086.) [Form 1001 has been used for making this disclosure in connection with bond interest, ¶658.]

The certificate herein provided for shall be printed on yellow paper and shall be in
580 size 8 by 3½ inches, and shall be printed to read from left to right along the 8-inch dimension.

581 The paper upon which the certificate is to be printed shall correspond in weight and texture to white writing paper 21 by 32, about 40 pounds to the ream of 500 sheets.

Individuals or organizations desiring to print their own certificates may do so,
582 but certificates so printed must conform in size and be printed in similar type and upon the same color, shade and weight of paper as used by the Government.

* * * * * * * * * * *

583 The normal income tax on the character of income herein specified and payable to nonresident * * * corporations, etc., will be deducted, withheld and paid to the proper officer of the United States Government authorized to receive it, unless the corporation, etc., entitled to the payment shall file a certificate (under penalty for false claim), in form and as herein provided, and only those nonresident * * * corporations, etc., which have an "office or place of business" in the United States can use the certificate herein provided to be used. The corporations, etc., which are permitted to use the certificate herein provided, are required to make and render a return of income to the Collector of Internal Revenue for the district in which they have their office or place of business, as provided by the Act of September 8, 1916. (T. D. 2374, Sept. 28, 1916.)

584 Law ¶22. **Definition of the Term "Withholding Agent."**—"The term 'withholding agent' means any person required to deduct and withhold any tax under the provisions of section 221 [¶553] or section 237 [¶572];"

585 Guardians, trustees, executors, administrators, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity hereinafter referred to as fiduciary agents, who hold in trust an estate of another person or persons, shall be designated the "source" for the purpose of collecting the income tax. (T. D. 2231, July 16, 1915.)

586 An effort has been made to meet the views of certain departments that withholding should occur from the aggregate amounts received by an individual from the various disbursing officers within a department; but, after further and careful consideration of both the law and the administrative features involved, it has been determined that each disbursing officer must be governed by the amounts paid by him alone, and that it is not incumbent upon him to ascertain and take into consideration amounts that may have been paid by other disbursing officers.

This view is in full accord with the provision of the income-tax law which makes
587 "all officers and employees of the United States having the control, receipt, custody, disposal, or payment," etc., personally liable for the normal tax of 1 [8] per cent on amounts passing through their hands, subject to the character and amount of income and the exemptions fixed by law.

All rulings heretofore made on the subject, by letter or otherwise, that are in con-
588 flict herewith, are hereby overruled and superseded. (T. D. 2135, Jan. 23, 1915.)

589 All persons, firms, etc., mentioned above are referred to in these regulations as "debtors" or "withholding agents," and the word "source" is to apply to the place where the income originated and is payable. (Art. 31, Reg. 33, Jan. 5, 1914.)

590 **Tax-Exempt Corporations Required to Withhold.**—While the organizations enumerated in section 11 of this title are themselves exempt from the tax on any income received by them, they are not exempt from the requirements of the title with respect to the withholding of the normal tax on bond interest * * * paid to foreign corporations or bond interest paid to individuals on bonds having a tax free covenant or from furnishing information in accordance with the provisions of this title as amended by section 1205 of Title XII of the act of October 3, 1917. (Art. 81, ¶336, Reg. 33, Rev., Jan. 2, 1918.)

591 **Intent of the Law.** [The provision of the 1916–1917 Act of which the first and last sentences of the herein following paragraph are quotations, practically, is not carried into the present law. To what extend the "intent and purpose" of the present law will be considered to be similar to the "intent and purpose" of the old law will undoubtedly be a matter of regulation.] The intent and purpose of the income-tax law is that all gains, profits, and income of a taxable class shall be charged and assessed with the corresponding income tax, normal and additional, and such tax shall be paid by the owner of such income or the proper representative thereof having the receipt, custody, control, or disposal of the same. In any case where the conditions which obtain do not appear to fall within the law and regulations for the assessment and collection of the income tax, the proper tax shall be assessed in the particular case by the Commissioner of Internal Revenue upon his findings concerning the same. Ownership of income and liability for tax thereon shall be determined as of the year for which the return is required to be rendered. (Art. 49, ¶277, Reg. 33, Rev., Jan. 2, 1918.)

592 Law ¶432. "Sec. 1307. That in all cases where the method of collecting the tax imposed by this Act is not specifically provided in this Act, the tax shall be collected in such manner as the Commissioner, with the approval of the Secretary, may prescribe."

593 **Record to be Kept.**—Every individual, partnership, corporation, or association liable to any tax imposed under the internal revenue laws of the United States or for the collection thereof shall keep such records and render such statements and returns, under oath, as shall be prescribed by the Commissioner of Internal Revenue. (Art. 50, ¶278, Reg. 33, Rev., Jan. 2, 1918.)

594 **Miscellaneous Income Defined.**—[For interest on corporate obligations read at ¶601, et seq.]—The above [¶554] includes all income derived from salaries, wages, rents, royalties, interest, taxable annuities, emoluments, or other fixed and determinable annual gains, profits, and income of another person—such as the payment of interest upon the obligations of individuals. (T. D. 2135, Jan. 23, 1915.)

595 The person, firm, company, co-partnership, corporation, joint stock company or association, and insurance company in the United States, citizen or resident alien, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodic gains, profits, and income of whatever kind, to a nonresident alien, under any contract or otherwise, which payment shall represent [taxable] income of a nonresident alien * * * [or foreign corporation, subject to taxation under the Act, not engaged in trade or business within the United States and not having any office or place of business therein] shall deduct and withhold from such annual or periodic gains, profits, and income, regardless of amount and pay to the officer of the United States Government authorized to receive the same such sum as will be sufficient to pay the normal tax of [8 or 10] per cent imposed by law, and shall make an annual return on Form 1042. (T. D. 2109, Dec. 28, 1914.) (T. D. 2313, Mar. 21, 1916.)

596 **Withholding on Salaries Based on Calendar Year.**—The salary of an individual is subject to withholding at the source only on the basis of the calendar year. Corporations which have a fiscal year other than the calendar year * * * , will be required to withhold on the basis of the calendar year. (T. D. 2090, Dec. 14, 1914.)

597 **Notes Given in Lieu of Cash Payments.**—Where notes are given in payment of rent, the lessee's obligation to withhold is not altered. The lessee's obligation is the

same as in the case of cash rental, withholding occurring at the time the notes are given, and not at maturity. Real estate agents are not required to deduct and withhold the normal tax from rents collected. * * * * The agent stands in the place of the landlord and receives money from tenants in exactly the same capacity as the landlord would receive such moneys and should be treated as such. A real estate agent does not act as an agent of the debtor. Therefore the duty of withholding the tax can not be transferred from the debtor to such agent, because such transfer would simply be transferring the duty of withholding to the landlord himself. (T. D. 2090, Dec. 14, 1914.)

598 **Interest on Bank Deposits.**—Nonresident alien individuals and corporations are required to pay tax on all income received in the calendar year from sources within the United States, except exempt sources. Interest received from deposits in banks located within the United States constitutes income received from sources within the United States and is subject to the withholding provisions of the Act of September 8, 1916, as amended by the Act of October 3, 1917. Banks are therefore required to withhold the normal tax of [8] per cent upon interest paid to nonresident alien individuals and the normal tax of [10] per cent * * * upon interest paid to a nonresident alien corporation "not engaged in business or trade within the United States and not having any office or place of business therein." (T. D. 2623, Dec. 28, 1917.)

599 Interest received from deposits in banks located within the United States constitutes income received from sources within the United States and is subject to the withholding provisions of the Act of September 8, 1916, as amended by the Act of October 3, 1917, as to nonresident alien individuals. Banks are, therefore, required to withhold the normal tax of [8] per cent on such interest paid to nonresident alien individuals.

600 Though nonresident alien corporations are liable to income tax on interest received from deposits in banks located within the United States, that portion of Treasury Decision 2623 authorizing withholding of such tax against such corporations is hereby revoked. [The law under which this T. D. was issued made no provision for withholding the tax against miscellaneous income paid to certain foreign corporations, as does the present law, ¶572.] (T. D. 2652, Feb. 6, 1918.)

Return of Taxes Withheld.—[Read at ¶698.]

Payment of the Taxes Withheld. [Read at ¶720.]

TAX TO BE DEDUCTED AT THE SOURCE ON INCOME FROM INTEREST ON DOMESTIC OBLIGATIONS.

601 **Tax Withheld in Case of Interest on Obligations Not Containing Tax-Free Covenants.**—[Applies only to nonresident alien individual owners (Law provision at ¶553) and to foreign corporations not engaged in trade or business within the United States and not having any office or place of business therein (Law provision at ¶572). The regulations follow.]

602 Law ¶208. **Owner to be Known to Withholding Agent or Tax is Withheld in Any Case.**—"*Provided*, That the Commissioner may authorize such tax [8%, ¶559, although the rate of tax against corporations is 10%, ¶574? Read ¶2996.] to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent."

603 **No Withholding Against Known Citizens or Residents in the Case of Interest on Corporate Obligations Not Containing Tax-Free Covenants.**—Income paid to citizens or residents of the United States is subject to withholding of normal tax at the source only when derived from interest on bonds and mortgages, or deeds of trust, or other similar obligations of corporations, joint stock companies, etc., containing a so-called "tax-free" or "no deduction" clause. (Mimeograph letter to Collectors, No. 1663, Nov. 1, 1917.)

Information Relative to Ownership to be Disclosed by Means of Ownership Certificates in the Case of Coupon Interest.—[Read at ¶651.]

604 Law ¶209. **Tax Withheld in Case of Interest on Obligations Containing Tax-Free Covenants.**—"(b) In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation contain a contract or provision by which the obligor agrees [¶2996]?

605 Law ¶210. "to pay any portion of the tax imposed by this title upon the obligee, or"

606 Law ¶211. "to reimburse the obligee for any portion of the tax, or"

607 Law ¶212. "to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon or to retain therefrom under any law of the United States,"

608 Law ¶213. **2% to be Withheld in Case of Interest on Tax-Free Covenant Obligations.**—"the obligor shall deduct and withhold a tax equal to 2 per centum of the interest upon such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods and"

609 Law ¶214. **Withholding of 2% in Case of Interest on Tax-Free Covenant Obligations Applies Against Nonresident Alien Individuals, Citizens and Residents, and Partnerships.**—"whether payable to a nonresident alien individual or to an individual citizen or resident of the United States or to a partnership:"

610 Law ¶336. **Withholding of 2% in Case of Interest on Tax-Free Covenant Obligations Applies Against Foreign Corporations Not Engaged in Trade or Business Within the United States and Not Having Any Office or Place of Business Therein.**—Sec. 237 [¶572]: "*Provided*, That in the case of interest described in subdivision (b) [¶604] of that section the deduction and withholding shall be at the rate of 2 per centum."

611 **Liability of Debtor Corporation, When No Exemption is Claimed, in Case of Bond Bearing Covenant to Pay Old 1% Rate Only.**—Sec. 9-C, Act of September 8, 1916, as amended [¶604 and ¶609 above], provides that normal tax of 2% shall be deducted and withheld from interest payments upon bonds owned by citizens or residents of United States, if such bonds contain contract or provision whereby obligor agrees to pay any portion of tax imposed by that title upon obligee. Debtor corporation will, in such cases, be held liable for 2% tax, although the portion of tax guaranteed is only 1%. (Telegram to S. W. Straus & Co., New York, N. Y., dated Feb. 18, 1918, and signed by Commissioner Daniel C. Roper.)

612 Law ¶215. **Owner to be Known to Withholding Agent or Tax is Withheld in Any Case.**—"*Provided*, That the Commissioner may authorize such tax [2%, ¶608] to be deducted and withheld in the case of interest upon any such bonds, mortgages, deeds of trust or other obligations, the owners of which are not known to the withholding agent."

Information Relative to Ownership to be Disclosed by Means of Ownership Certificates in the Case of Coupon Interest.—[Read at ¶651.]

613 **Coupon Interest Accruing Prior to Incidence of Tax.**—Where coupons bear a date prior to March 1, 1913, but have not been presented for payment until 1915, although funds have been on hand to meet them since maturity, no withholding is required for the reason that such coupons represent income that was due and payable and could have been reduced to possession, on demand, prior to the incidence of the income tax.

614 Where coupons were due and payable in 1911, and have been in default since that year, funds to meet them having been deposited with the withholding agent since January 1, 1915, it is held that the income represented by such coupons accrued to the owners of the bonds prior to the incidence of the tax, and hence does not constitute taxable and returnable income. (Extract from letter to the Central Trust and Safe Deposit Company of Cincinnati embodying a decision by Commissioner W. H. Osborn, signed by Collector A. C. Gilligan, and dated Mar. 16, 1915.)

615 **Obligations of Corporations Defined.**—Obligations of corporations similar to bonds, mortgages, deeds of trust, etc., for income-tax purposes are held to be those obligations of corporations which, though not bonds, mortgages, or deeds of trust, are similar in form, purpose, or in being extended beyond the time of ordinary, bankable, commercial paper. (T. D. 2090, Dec. 14, 1914.)

616 **Equipment Trust Notes.**—Equipment trust notes secured by mortgage issued by a corporation are subject to withholding. Temporary receipts issued pending preparation and issue of the notes themselves stand in the place of the notes, and where an interest period intervenes and receipts are to be presented for indorsement thereon of a payment of interest, requisite certificates of ownership claiming or not claiming of exemption should be filed. (T. D. 2090, Dec. 14, 1914.)

617 **Investment Certificates.**—Investment securities issued by a corporation for a term of years are corporate obligations within the meaning of the income-tax law. (T. D. 2090, Dec. 14, 1914.)

618 Scrip.—[See ¶928.] Scrip certificates issued by a corporation to its stockholders in lieu of dividends, such scrip certificates bearing interest and redeemable at a specified time not longer than one year from date of issue, are not corporate obligations similar to bonds, mortgages, or deeds of trust * * * . Payment in scrip is held to be equivalent to payment in cash. * * * . (T. D. 2090, as amended by T. D. 2152, Feb. 12, 1915.)

619 **Interest on Obligations of United States or of State or Political Subdivision Thereof is Exempt from the Withholding Provisions.**—Income derived from the interest upon the obligations of a State, county, city, or any other political subdivision thereof, and upon the obligations of the United States or its possessions, is not subject to the income tax, and certificates of ownership in connection with coupons or registered interest orders for such interest will not be required. (Art. 37, Reg. 33, Jan. 5, 1914.)

620 Where a municipality purchases a public utility subject to a mortgage, the mortgage retains its original character, even though the municipality assumes the mortgage indebtedness and pays the interest thereon. Therefore, the indebtedness secured by such mortgage is not an obligation of the municipality within the meaning of Paragraph B [¶963] of the income-tax law. (T. D. 2090, Dec. 14, 1914.)

621 **One Form of a Qualified Tax-Free Covenant which Relieves the Debtor from Withholding the Amount of the Normal Tax from Bond Interest Payments to Citizens and Residents.**—With further reference to your letter of Oct. 27, 1917, herein quoted, "Please advise us at the earliest possible moment whether bonds bearing the covenant that

> 'Both principal and interest of this bond are payable without deductions for any taxes, assessments or other governmental charges which the company may be required to pay thereon or authorized to retain therefrom under any present or future law or requirement of the United States of America (except any Federal Income Tax) or any State, county, municipality or other governmental subdivision thereof,'

come within the provisions of subsection (c) of Section 9 of the Federal Income Tax Law requiring the debtor corporation to withhold the amount of the normal tax at the source."

you are advised that interest from bonds containing the covenant quoted will not be subject to withholding as provided in subsection (c), [¶604] Section 9 of the Act of Sept. 8, 1916, as amended by Section 1205 of the War Revenue Act of Oct. 3, 1917. (Letter to Simpson, Thatcher & Bartlett, New York, N. Y., signed by Deputy Commissioner L. F. Speer, and dated Nov. 21, 1917.)

622 **Federal Income Tax being a Tax on Income and not a Tax on the Interest on a Bond, per se, a Tax-Free Covenant in a Bond does not Obligate the Debtor to Pay the Interest Free of Income Tax.** [This was the decision (April 2, 1917) of the Supreme Court of Arkansas in the Urquhart v. Marion Hotel Company case (194 S. W. 1).]

623 **The Term "Debtor" Defined.**—The term "debtor," as hereinafter used [in connection with bond interest] shall apply to all corporations, joint-stock companies or associations, and insurance companies. (Art. 38, Reg. 33, Jan. 5, 1914.)

624 **Withholding and Paying Agents may be Appointed by Debtors.**—[and] Such "debtor" may appoint withholding and paying agents to act for it in matters pertaining to the collection of this tax, upon filing with the collector of internal revenue for the district a proper notice of the appointment of such agent or agents. (Art. 38, Reg. 33, Jan. 5, 1914.)

625 **Filing Notice of Appointment of Paying Agent.**—This notice of appointment should be placed on file in the office of the collector of internal revenue for the district in which the debtor corporation is located or has its principal place of business, and the said collector should notify the collector of internal revenue for the district in which the duly authorized withholding agent is located. (T. D. 2135, Jan. 23, 1915.)

626 **Where Returns and Certificates are to be Filed by Paying Agents Appointed by Debtors.**—Where such withholding agent is so authorized by the debtor corporation, he may file with the collector of his district the required returns and accompanying certificates in which case the assessment of the tax withheld by him will be made in that district. Unless such authority be given, such reports, etc., will be furnished by the debtor corporation to the collector of its district (i. e., the district in which its principal financial or business office is located), where, in such case, assessment will be made. (Art. 38, Reg. 33, Jan. 5, 1914.)

627 The duly authorized withholding agent is required to file its return with the collector of internal revenue for the district in which the said withholding agent is located, and is not required to file a return with the collector for the district in which the debtor corporation is located. (T. D. 2135, Jan. 23, 1915.)

628 **The Debtor Corporation only Deducts the Tax, if Any.**—In reply you are advised that this office holds that the normal tax, to be withheld under the Act of Sept. 8, 1916, as amended by Section 1205, subdivision (c), Act of Oct. 3, 1917, is required to be deducted only by the debtor corporation and should not be withheld by the bank by whose agency collection is made. (Letter to Sackett, Chapman & Stevens, New York, N. Y., signed by Deputy Commissioner L. F. Speer, and dated Nov. 13, 1917.)

629 **Substitute Certificates.**—Collecting agents, responsible banks and bankers receiving coupons for collection with ownership certificates attached may present the coupons with the original certificates to the debtor corporation or its duly authorized withholding agent for collection or the original certificates may be detached and forwarded direct to the Commissioner of Internal Revenue, provided such collecting agent shall substitute for such certificate its own certificate [Form 1058 *exemption claimed* and Form 1059 *exemption not claimed*] and shall keep a complete record of each transaction showing—

1. Serial number of item received.
630 2. Date received.
3. Name and address of person from whom received.
4. Name of debtor corporation.
5. Class of bonds from which coupons were cut.
6. Face amount of coupons.

For the purpose of identification the substitute certificates shall be numbered
631 consecutively and corresponding numbers given the original certificates of ownership.
Substitute certificates by collecting agents, banks, and bankers, in lieu of original
632 certificates of ownership accompanying coupons presented for collection shall be discontinued with respect to ownership certificates presented with coupons for collection by nonresident alien individuals, firms, corporations, organizations, etc.

In all such cases the original certificates of ownership shall be forwarded to the
633 debtor corporation without substitution. (Art. 43, ¶265–269, Reg. 33, Rev., Jan. 2, 1918.) [¶3001.]

634 **No License Required of Collecting Agents for Substituting Their Own Certificates for Ownership Certificates.**—Until the further ruling by this department, the banks, bankers, and other collecting agents who may substitute their certificates of owners under the foregoing plan will not be required to secure a license from the Treasury Department for being permitted to make such substitutions of their own certificate for those of the owners, provided these regulations are strictly complied with. (T. D. 1903, Nov. 28, 1913.)

635 **Permission to Substitute Own Certificates for Ownership Certificates Extended to Collecting Agents in Foreign Countries.**—The permission here granted [paragraph 629] will extend to responsible banks, bankers, and collecting agents in foreign countries, through whom collection of such interest coupons is made. [Privilege discontinued in certain cases, ¶633.] (Art. 40, Reg. 33, Jan. 5, 1914.)

636 **Endorsement by Collecting Agent Required on Certificates of Ownership for Which Own Certificate is Substituted.**—The certificate of the owner, for which the foregoing certificate of the collecting agent may be thus substituted by the collecting agent first receiving said coupons for collection must be given the following indorsement by the collecting agents and should be made preferably with a rubber stamp.

Owner's certificate No.....
.....
(Name of collecting agency.)

..... 191–.
(Give date of certificate.)

The counterpart of the within certificate bearing like number was attached to the coupons within mentioned for delivery to the debtor or withholding agent, by whom the coupons are payable.

(T. D. 1903, Nov. 28, 1913.)

637 **Fac-simile Signature May be Used by Collecting Agents in Signing Their Own Certificates Substituted for Ownership Certificates.**—You are advised that as a convenience to banks and collecting agents who desire to substitute their certificates Form 1058 and 1059 for the owner's certificate accompanying the coupons deposited for collection, it is hereby provided that the name of the bank or collecting agent may be

printed or stamped, and that a fac-simile of the signature of the person authorized to sign the substitute certificate for the bank or collecting agent may also be printed or stamped on the certificate: Provided, that in all cases the bank shall first file with the Commissioner of Internal Revenue a certificate of its authorization in substantially the form following:

.....
(City) (Date)

THE COMMISSIONER OF INTERNAL REVENUE:
Washington, D. C.

The undersigned hereby authorizes the use of the fac-simile signature shown below upon all substitute income tax certificates issued in its name until this authorization is revoked by written notice to you.

.....
(Name of bank or collecting agent.)
By.....
(Signature of person authorized to sign.)
.....

.....
(Fac-simile signature of person authorized to sign.)

(Official position.)
(T. D. 1986, May 29, 1914.)

638 Law ¶216. **Tax of Two Per Cent Not to be Withheld Against Citizens and Residents in the Case of Interest on Tax-Free Covenant Obligations if Personal Specific Exemption be Claimed.**—"Such deduction and withholding shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1, a signed notice in writing claiming the benefit of the credits provided in subdivisions (c) [¶1128] and (d) [¶1138] of section 216;"

639 The withholding provisions of the income-tax law apply—

(b) To the normal income tax of citizens and resident aliens, only when derived from interest on bonds and mortgages, deeds of trust, or other similar obligations of corporations, associations, etc., which have a "tax-free" covenant clause (i. e., a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this title upon the obligee or to reimburse the obligee in any portion of the tax or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon or to retain therefrom under any law of the United States), regardless of the amount and period of payment.

640 The amount to be withheld is 2 [8] per cent on the amount of payment, unless the person entitled to receive such interest shall file with the withholding agent, on or before Feb. 1, a signed notice in writing claiming the benefit of an allowable exemption under section 7, act of September 8, 1916, as amended. (Art. 43, ¶254, 256–257, Reg. 33, Rev., Jan. 2, 1918.)

641 Law ¶217. **Tax of Two Per Cent Not to be Withheld Against Nonresident Aliens in the Case of Interest on Tax-Free Covenant Obligations, if Claim for Personal Specific Exemption at the Source has been Authorized by Regulations, and such Claim be made.**—"nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Commissioner under section 217 [¶541]." [¶2997.]

642 **Claiming Exemption at Source by Citizens or Residents on Interest on Tax-Free Covenant Bonds.**—How may a citizen or resident of the United States secure the benefit of personal exemption to which he is entitled when receiving a payment of interest on bonds containing a so-called "Tax-Free" or "No Deduction" clause? (Answer.) By attaching to the interest coupons an income tax exemption certificate and claiming thereon the amount of exemption desired. The amount of personal exemption claimed on such certificates during any one calendar year is not to exceed the total amount of personal exemption to which he is entitled. (Question 104, 1918 Income Tax Primer.)

643 **Ownership Certificates.**—The owners of bonds of domstic and resident corporations shall, when presenting interest coupons for payment, file a certificate of ownership for each issue of bonds, showing the name and address of the debtor corporation, the name and address of the owner of the bonds, whether the payee is married or the head of a family, and the amount of interest. (Art. 43, ¶261, Reg. 33, Rev., Jan. 2, 1918.) [For list and copies of forms see back of book.] [¶2998.]

644 This office has received several letters with reference to a letter addressed to the Old Colony Trust Company of Boston, Massachusetts, under date of May 10, 1915, in which the office acquiesced in the contention of various debtor corporations that the actual facts of the relation of firms, organizations and fiduciaries to the withholding

provisions of the Income Tax Law, once established to their satisfaction, may be accepted by this office upon the proper showing of debtor corporations and withholding agents, for their own convenience, the interest of the Government being safeguarded by the personal liabilities imposed upon them by law. In view, however, of the confusion created in the matter of the certificates required to be furnished with coupons or interest orders showing ownership of bonds and the exemption claimed, you are advised that the office holds that certificates of this character must be obtained by debtor corporations and withholding agents in all cases as required by the Regulations. (Mimeograph letter No. 1242 to Collectors, July 8, 1915.)

645 **Registered Interest on Registered Bonds.**—Certificates of ownership are not required to accompany interest orders of checks in payment of interest on fully registered bonds, as information as to ownership of bonds will be furnished by debtor organizations on monthly list returns, Form 1012; but claim for exemption [if exemption may be claimed] must be filed with debtors, or the tax must be withheld; and the form of certificate provided for use of owners of coupon bonds, may be used by owners of registered bonds for the purpose of claiming this exemption. (T. D. 1974, April 21, 1914.)

646 Where such certificates are so filed, the said debtors shall stamp or write on the interest orders or checks, as the case may be, "*Exemption claimed by Certificate filed with debtor.*" (T. D. 1974, April 21, 1914.)

647 Where prescribed certificates are not so filed, said debtor shall deduct and withhold the normal tax of one [two] per cent from the amount of such payment, and shall stamp or write on the interest order or check, as the case may be, "*income tax withheld by debtor.*" (T. D. 1974, April 21, 1914.)

648 Responsible banks, bankers, or collecting agents receiving for collection interest orders or checks bearing the aforesaid endorsements, may present said interest orders or checks for collection without requiring that certificates of ownership be filed therewith. (T. D. 1974, April 21, 1914.)

649 Where because of failure to file certificates claiming exemption, in compliance with above regulations, a part of the income from interest on registered bonds has been withheld for the payment of the normal income tax, debtors may, upon the filing of the proper certificates as provided in Article 42, Income Tax Regulations, to the extent of exemption claimed, release and pay to the persons entitled thereto the amount of such income so withheld. (T. D. 1974, April 21, 1914.)

650 **Comment.**—[It should be remembered that the law under which the following regulations on the use of ownership certificates were promulgated, nonresident aliens were not privileged to make claim for specific exemption, under any circumstances, and further that there was no withholding against partnerships in any case. Now, nonresident alien individuals *may* have the benefit of the personal specific exemption and the Commissioner is authorized (¶641), in his discretion, to grant to nonresident alien individuals the privilege of claiming such exemption at the source. If permission is granted then, presumably, Form 1000 (or some similar form) will be used if no exemption is claimed, and Form 1001 (or some similar form) will be used if exemption is claimed. Now, a tax of 2% is to be withheld at the source on payments of interest on tax-free-covenant obligations to partnerships, whether foreign or domestic. No tax is to be withheld at the source on any other character of income payments to partnerships, including interest on corporate obligations *not* having tax-free covenants. Naturally, no provision is made for claiming personal specific exemption in the case of partnerships. Therefore, presumably, Form 1000 will be used by partnerships when presenting coupons from tax-free-covenant bonds, whereas in presenting coupons from bonds not carrying the covenant, Form 1001 will continue to be used.] [Read at ¶2996 and at ¶2977.]

651 **Form 1000 to be Used When Tax is to be Paid at the Source** [read ¶650 above].—Form 1000, revised, shall be used (a) when no personal exemption is claimed against interest on bonds containing a "tax-free" covenant by citizens or residents of the United States [read ¶638]; (b) by nonresident alien individuals, foreign corporations having no office or place of business in the United States whether or not such bonds contain a "tax-free" covenant; and

[When Status of Bondholder is Unknown] (c) in the case where coupons are received not accompanied by certificates of ownership. The first bank receiving coupons not accompanied by ownership certificates will make a certificate crossing out "owner" and inserting "payee" and will enter the amount of interest on line 4. (Art. 43, ¶262, Reg. 33, Rev., Jan. 2, 1918.)

652 This office has before it your letter dated January 7, 1918, in which you request to be informed as to the rate of tax which should be withheld when coupons from bonds of American corporations, owned by nonresident aliens are presented for payment in the United States, accompanied by income tax certificate form 1002 and no information as to the owner can be obtained. ¶In reply you are advised that if it is impossible to ascertain the information necessary to determine whether the tax should be withheld, and the rate which applies, tax should be withheld at the rate of 6% [8%, unless tax-free-covenant bond and then 2% as that is the maximum to be deducted in any event in such cases]. If an excess amount of tax should be paid to the Government, the matter may be adjusted later through a claim for refund. (Letter to Lee, Higginson & Co., Boston, Mass., signed by Commissioner Daniel C. Roper, and dated Jan. 30, 1918.)

653 Form Ten Hundred Two now obsolete. If coupons are not accompanied by certificates disclosing ownership, Form One Thousand revised January, 1918, must be made by first bank which will enter amount of interest on line four and debtor corporation will withhold tax from that amount. (Telegram to Lee, Higginson & Co., Boston, Mass., signed by Commissioner Daniel C. Roper, and dated Jan. 28, 1918.)

654 **Form 1001 to be Used When Tax is Not to be Paid at the Source** [read ¶650 above].—Form 1001, revised, shall be used (a) when personal exemption is claimed against interest on bonds containing a "tax-free" covenant by citizens or residents of the United States [read ¶638], also when presenting coupons from bonds not containing a "tax-free" covenant; (b) by domestic partnerships, corporations, or associations; (c) by nonresident alien partnerships; and (d) by foreign corporations having an office or place of business in the United States, whether or not such bonds contain a "tax-free" covenant. (Art. 43, ¶263, Reg. 33, Rev., Jan. 2, 1918.)

655 Where bonds of foreign countries, or bonds or stocks of foreign corporations, are owned by citizens or residents of the United States, individual or fiduciary, or by domestic or resident corporations, joint stock companies, associations, insurance companies or partnerships, ownership certificate 1001A shall be executed by the actual owner, or by his duly authorized agent, when presenting the item for collection, whether such item is a dividend or an interest payment, except in the case of a foreign country or a foreign corporation having a paying agent in this country and issuing bonds which contain a 'tax-free' covenant clause. In such cases the paying agent is required to withhold the normal tax upon the interest on such bonds; and ownership certificate, Form 1000, properly modified to show that the debtor has a paying agent in this country, should be used, unless the owner desires to claim exemption; in which case Form 1001A should be filed.

656 Where bonds of foreign countries, or bonds or stock of foreign corporations, are owned by nonresident alien individuals, or foreign corporations, associations or partnerships, ownership certificate, Form 1071, Revised, shall be used for and on behalf of such owners by any responsible bank or banker, either foreign or domestic. (Part of Art. 35, Reg. 33, Rev., Jan. 2, 1918, as amended by T. D. 2759, Oct. 2, 1918.)

657 In case a citizen or resident individual receives interest on bonds containing a "tax-free" covenant in excess of the amount of personal exemption which the individual may claim, any such excess must be reported on Form 1000, revised. (Art. 43, ¶264, Reg. 33, Rev., Jan. 2, 1918.)

658 * * * Interest on bonds of domestic corporations, joint stock companies or associations, and insurance companies, payable to nonresident alien corporations, is subject to deduction of tax at the source at the rate of [8] per cent. Foreign corporations will file ownership certificate Form 1000 in presenting coupons for payment. If a foreign cor poration has an office, agent, or place of business in the United States, certificate Form 1001 shall be filed establishing such fact and relieving the corporation for deduction of the tax at the source. (Art. 202, ¶603, Reg. 33, Rev., Jan. 2, 1918.)

659 **Certificates of Ownership for Each Separate Issue of Bonds of Each Debtor.**—These certificates shall be made on the prescribed forms and shall be made out by each owner of bonds for the coupons or interest orders for each separate issue of bonds or obligations of each debtor. (Art. 39, Reg. 33, Jan. 5, 1914.)

660 **One Certificate of Ownership may be Used with Coupons of More Than One Maturity of the Same Issue of Bonds.**—Also that coupons of more than one maturity from the same issue of bonds may be covered by one ownership certificate. (Letter to the Columbia Trust Company, New York, N. Y., signed by Deputy Commissioner L. F. Speer, and dated Mar. 26, 1918.)

661 **One Ownership Certificate Will Suffice in Case of Joint Owners.**—1. Where fiduciaries have the control and custody of more than one estate or trust, and said estates and trusts have as assets bonds of corporations, etc., this office will hereafter require

that a certificate of ownership be executed for each estate or trust regardless of the fact that the bonds are of the same issue. When bonds are owned jointly by several persons, one of the owners may execute an ownership certificate in behalf of the other owners and endorse on the back thereof their names and addresses, and proportion of ownership of each.

2. Treasury Decision 1987, dated May 29, 1914, and instructions on ownership

662 certificates Forms 1000, and 1001, Revised, which provide for the filing of a separate certificate by each joint owner, are hereby superseded and repealed. (T. D. 2709, May 2, 1918.)

663 **Numbers of Bonds; Waiver of Requirement for Filling in on Certificates.**—Notice is hereby given that Regulation requiring the filling in on certificates of numbers of bonds, or other like obligations of corporations, etc., from which interest coupons are detached or upon which registered interest is to be paid—which was extended to Oct. 31, 1914, by T. D. 1985, issued May 28, 1914—is hereby waived until further notice. (T. D. 2022, Oct. 3, 1914.)

664 **Full Post Office Address on Certificates.**—Replying to your letter of April 15, 1914, relative to street address on certificates you are advised that banks should *exercise care in securing full post office address* on certificates. Where no street address is given, this office will assume that same is not necessary in addressing mail, and certificates will NOT be returned for correction. (Letter to National Park Bank, signed by Deputy Commissioner L. F. Speer, and dated April 23, 1914.)

665 **Address may be Omitted from Certificates in Certain Cases.**—Address may be omitted from ownership certificates in case prominent corporation and in its place description bond issue inserted. (Telegram to Lee, Higginson & Co., Boston, Mass., signed by Commissioner Daniel C. Roper, dated Feb. 11, 1918.)

666 **Banks and Trust Companies May Use Facsimile Signatures.**—You are advised that as a convenience to Banks and Trust Companies having a large number of ownership certificates to execute in the collection of interest on bonds, it is hereby provided that the name of the Bank or Trust Company may be printed or stamped, and the facsimile of the signature of the person authorized to sign for the Bank or Trust Company in executing the said ownership certificates may be printed or stamped on the certificate: Provided, that in all cases the Bank or Trust Company shall first file with the Commissioner of Internal Revenue a certificate of its authorization in substantially the following form:

.....
(City) (Date)

THE COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

The undersigned hereby authorizes the use of the facsimile signature shown below upon all income tax ownership certificates issued in its name until this authorization is revoked by written notice to you.

.....
(Name of Bank or Trust Co.)
By.....
(Signature of person authorized to sign)
.....
(Official position.)

.....
Facsimile signature of person
authorized to sign.)

(T. D. 2258, Nov. 1, 1915.)

667 **Use of Initials on Certificates Authorized.**—Replying to your telegram of the 6th instant, you are advised that in writing the name at top of certificate initials may be used.*

668 **Married Woman in Executing Certificate Should Use Her Own Christian Name.**—A married woman should sign her own Christian name and not the name of her husband.*

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*[Comment: The answers embodied in paragraphs above, are reproduced, by courtesy, from a letter to the Central Trust Company of New York, dated Jan. 7, 1914, signed by Deputy Commissioner L. F. Speer. These are printed now as there still seems to be confusion on the points covered.]

669 **Ownership Certificates Should not be Accepted unless All Information Called for Thereon is Shown.**—Can certificates one thousand and one thousand one be accepted if questions regarding marital status and head of family are not answered? Wire collect. (Answer.) Certificates should not be accepted unless all information called for thereon is shown. (Telegram from M. F. Frey, Guaranty Trust Co., New York, N. Y., the reply thereto signed by Commissioner Daniel C. Roper, and dated Feb. 28, 1918.)

670 **The Marital Status Interrogatory on Ownership Certificates.**—Your inquiry as to whether "an income tax certificate of the new form, executed by the owner, must indicate whether he is married and the head of a family" is answered in the affirmative. (Letter to the Columbia Trust Company, New York, N. Y., signed by Deputy Commissioner L. F. Speer, and dated Mar. 26, 1918.)

671 Refer letter March twenty-sixth IT:PA-CEK [¶670]. If bondholder answers "yes" to first question on revised Forms 1000 or 1001 must second question be answered? Wire collect. (Answer.) If bondholder married and answer to question relative marital status is "yes" then not necessary to answer question as to whether or not head of family. (Telegram of inquiry from the Columbia Trust Company, New York, N. Y., and the reply thereto signed by Commissioner Daniel C. Roper, and dated March 30,1918.)

672 Interrogatories as to marital status on ownership certificates need not be answered when certificates are executed by nonresident alien individuals. (Telegram to The Corporation Trust Company, signed by Commissioner Daniel C. Roper and dated May 23, 1918.)

673 **Total Exemption Allowed may be Prorated Between Husband and Wife.**—You are advised that the specific exemption of * * * from the aggregate income of husband and wife, allowed by * * * the Income Tax Law, may be claimed by either, or may be prorated between them, in any proportion that may be agreed upon.

674 Under these circumstances, certificate Form [1001], showing the amount of exemption claimed, as agreed upon between husband and wife, should be accepted by debtor corporations. (Part of letter to The National Bank of Commerce in St. Louis, signed by Deputy Commissioner L. F. Speer, and dated April 7, 1915.)

675 **Stamp Indicating "Satisfied as to Identity of Agent" not Required.**—Receipt is acknowledged of your letter of February 20, 1918, and in reply you are advised that it is not necessary for the first collecting agent receiving coupons accompanied by an ownership certificate which was executed by an agent on behalf of the owner to affix a stamp containing the words "Satisfied as to identity and responsibility of agent." (Letter to the Columbia Trust Company, New York, N. Y., signed by Deputy Commissioner L. F. Speer, and dated March 26, 1918.)

676 **Person First Receiving Coupons or Interest Orders for Collection Need not Endorse on the Back of the Certificate.**—This office is in receipt of your letter of September 18, 1914, inquiring whether the provision in T. D. 1887, October 25, 1913, requiring that, "the person or corporation first receiving coupons or interest orders for collection shall write or stamp his or its name and address and date on the back of said certificates," is still in force.

677 You are advised that this requirement appearing in the first draft of the Regulations was omitted in the subsequent draft of the Regulations, and as they now appear in permanent form in Regulations No. 33 adopted January 5, 1914.

678 The foregoing endorsement is not now required. (Letter to The Corporation Trust Company, signed by Deputy Commissioner L. F. Speer, and dated September 18,1914.)

679 "You are advised that the endorsement provided in Treasury Decision 1887, dated October 25, 1913, *is no longer required.*" (Extract from a letter to the National Park Bank, signed by Internal Revenue Collector Anderson, New York, and dated December 23, 1914.)

680 **Proper Ownership Certificates to be Used by Fiduciaries, Whether Corporate or Individual.**—Should a corporate fiduciary acting for an individual beneficiary use form of ownership certificate and line thereon designated for a corporation or that designated for an individual? In general are discriminations between the form of ownership certificates and line thereon to be used by fiduciaries to be based upon the status, corporate or individual, of the fiduciary, or on the status, corporate or individual, of the beneficiary? ¶Fiduciary, whether corporate or individual, must use lines on ownership certificates provided for use of fiduciary. Citizens or resident fiduciary should use Form 1000, line 1; and Form 1001, line 1 or line 2. Nonresident alien fiduciary should use Form

1000, line 2. (Telegram of inquiry from the First National Bank, Cleveland, Ohio, and the reply thereto signed by Commissioner Daniel C. Roper, and dated May 20, 1918.)

681 **Exchange of Interest Coupons for Funding Bonds.**—The exchange of interest coupons for funding bonds is a payment of interest on the bonds and the income tax should be imposed and paid upon such interest as income for the year in which it matures and such payment is made, and in the absence of proper claim for exemption the tax should be deducted and withheld on the amount represented by the coupons. (T. D. 2090, Dec. 14, 1914.)

682 **Advance Retirement of Bonds within an Interest Period.**—Where bonds, under contract provisions in the bonds, are retired within an interest period and prior to the expiration of the full term of the bond, ownership certificates will be required and should cover that part of the interest period affected between the beginning of such period and the date of the retirement of the bonds. (T. D. 2090, Dec. 14, 1914.)

683 Receipt is acknowledged of your letter of March 17, 1916, wherein you make reference to certain rulings of the office relative to the filing of certificates of ownership in cases where bonds are purchased by the debtor corporation and retired between interest dates. In reply you are advised that after a careful consideration of the matter the ruling contained in office letter of January 5, 1916, addressed to Messrs. White & Case, 14 Wall Street, New York City, has been annulled, and it is now required that in a case wherein the corporation which issued the bond, or its receiver or trustee, is the purchaser, and the bond is retired and all its coupons cancelled, the seller of the bond shall execute a certificate of ownership, claiming or not claiming exemption, to cover such coupons as are due and payable at date of sale, but are still attached to the bond, and the coupon covering the interest which had accrued from last interest date to date of sale. In short, in all cases where bonds are retired within an interest period and prior to the expiration of the full term of the bond, whether under contract or not, ownership certificates will be required, which certificates should cover that part of the interest period affected between the beginning of such period and the date of the retirement of the bonds. (Letter to one of our subscribers, signed by Deputy Commissioner L. F. Speer, and dated April 11, 1916.)

684 **Purchase and Sale of Bonds Between Interest Dates.**—This office acknowledges receipt of your letter of December 20, 1915, and in reply you are advised that, as stated in office letter of December 18, 1915, it is held that where a bond is purchased between interest-bearing dates, the seller is not required to execute, for Federal Income Tax purposes, an ownership certificate to accompany the interest coupon which is not due and payable and is not detached from the bond, but such a certificate will be required from the purchaser of the bond, when, at a later date, the coupon is detached and presented for payment or collection. (Letter to White & Case, New York, N. Y., signed by Deputy Commissioner L. F. Speer, and dated Jan. 5, 1916.)

685 **Usufruct of Foreign-Owned Bonds Belonging to an American Citizen or Resident.**—This office is in receipt of your letter dated November 9, 1914, stating that you had received a letter from one of your foreign correspondents containing the following inquiry:

> "We have on our accounts certain American bonds which are the property of Swiss citizens, but the usufruct of which belongs to an American citizen; when collecting the coupons of these bonds, can we sign the ownership certificates on behalf of the Swiss owners, or is it necessary to state thereon the name of the American beneficiary?"

In reply to your request for a ruling based on the facts given above, you are advised

686 that the coupons should be accompanied by a certificate of ownership signed by, or in behalf of, the person entitled to receive the income from the bonds. The revised form of certificates of ownership should be altered to show that such person is entitled to receive the interest on the bonds. For example, if Form 1000, Revised, is used, there should be inserted in the first line of the declaration on the certificate the words "interest on the" between the words "the" and the word "above-described," so that the certificate will read, "I do solemnly declare that I am a citizen or resident of the United States and am the owner of the interest on the above-described bonds, etc." (Special letter of Nov. 23, 1914.)

687 **When Coupons from Foreign-Owned Bonds Belong to Domestic Corporations.**—This office is in receipt of your letter of April 5, 1916, in which you ask, "A bank in New York purchased, since January 1, a number of coupons in Paris and London. These coupons are now in transit and will be presented for payment when they arrive. The bank cannot certify that it is the owner of the bonds, although it is the owner of the coupons for which it paid in full. Will the amount of such coupons be subject to taxation? If so, what recourse will the bank have to obtain a refund of the amount?" [Answer.]

The case should be handled in accordance with existing regulations, viz., the bank should use Form 1001 and strike out in line 2, of the certificate, the words "bonds from which were detached the accompanying * * * or," so that the declaration will be for ownership of the coupons. (Letter to The Corporation Trust Company, signed by Acting Commissioner David A. Gates, and dated April 5, 1916.)

688 **Bonds Purchased by Trustee Under the Mortgage Deed of Trust But Not Retired.**—With reference to the ruling contained in office letter of November 18, 1916, wherein it was held, in a case where corporate bonds are purchased "by the trustee under the mortgage deed of trust out of the money from a sinking fund when the bonds are not retired or cancelled but held alive by the trustee and interest is continued on the coupons, the interest so paid to the trustee being held for the account of the corporation issuing the bond" that the trustee merely acts as agent for the debtor corporation and that the corporation itself, or the trustee if duly authorized to act as agent for the corporation, should execute income tax certificates, Form 1001, Revised, to accompany the interest coupons detached from the bonds so purchased and held when such coupons are presented for payment or collection, you are advised as follows:

The office now holds that if legal title to the bonds rests with the trustee, he should execute * * * certificates * * * to accompany the coupons detached from the bonds when they are presented for payment or collection. (Letter to The Corporation Trust Company, signed by Commissioner W. H. Osborn, and dated Dec. 6, 1916.)

689 Size, Color, etc., of Certificates.—All certificates shall be, in size, 8 by 3½ inches, and shall be printed to read from left to right along the 8-inch dimension.

690 All paper upon which certificates shall be printed shall correspond in weight and texture to white writing paper 21 by 32, about 40 pounds to the ream of 500 sheets.

691 Certificates will be printed by the Government and furnished without cost for the use of bond owners.

692 Individuals or organizations desiring to print their own certificates may do so, but certificates so printed must conform in size and be printed in similar type, upon the same color, shape, and weight of paper as used by the Government.

693 Sample certificates showing size of type and color of paper can be secured from collectors of internal revenue in their several districts or from the Commissioner of Internal Revenue at Washington, D. C. (T. D. 1976, May 2, 1914.)

994 The department will furnish blank forms of certificates to be used in connection with the collection of the income tax by such parties as may make application for the same. Private corporations and others desiring to have these certificates printed for themselves may do so if they will strictly observe the requirements of the department as to size, print, form, color, and contents. (T. D. 1939.) (T. D. 2090, Dec. 14, 1914.)

695 **Ownership Certificates for Use by Foreigners May Be Printed in Two Languages.**—Certificates of ownership required to be filed with interest coupons or orders for registered interest by non-resident foreigners * * * and by foreign organizations, shall be printed, as prescribed by regulations, in the English language, and directly under each line of the English text, on each of the above-mentioned certificates, there may be printed the text of said certificate in a foreign language.

696 In executing these certificates, however, all blanks to be filled in, with amounts, shall be filled in using United States dollar values.

697 These certificates shall be of the same size as prescribed by regulations for all certificates of ownership. (T. D. 1926, Dec. 30, 1913.)

698 Law ¶218. **Returns of Taxes Withheld at the Source.**—"(c) Every individual, corporation, or partnership required to deduct and withhold any tax under this section shall make return thereof on or before March first of each year and [shall pay, ¶720]"

699 Return is to be made for the tax withheld in manner and on a form to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. This return is to be made after February 1 and on or before March 1 annually. The return shall show the name and address of the withholding agent, character of income, and the name and address of the recipient or his agent, amount of income, exemption claimed, and the amount of tax * * * withheld thereon. (Art. 46, ¶273, Reg. 33, Rev., Jan. 2, 1918.)

700 **Return of Taxes Withheld on Miscellaneous Income.**—Tax withheld from income other than bond interest will be accounted for on income-tax Form 1042, and separate reports of the payments entered on Form 1042 will be made on Form 1098. (Art 43, ¶260, Reg. 33, Rev., Jan. 2, 1918.)

Withholding agents shall make an annual list return (Form 1042) in duplicate,
701 to the collector of internal revenue for the district in which the withholding agent resides or has his principal place of business—which should be filed with the collector of internal revenue for the district in which the debtor or withholding agent is located, (T. D. 2135) on or before the 1st day of March in each year, showing the names and address of persons who have received incomes * * *, on which the normal tax of 1 [8 or 10] per cent has been deducted and withheld during the preceding year. (Art. 69, Reg. 33, Jan. 5, 1914.)

702 **Return of Taxes Withheld on Bond Interest.**—Tax withheld from bond interest will be accounted for monthly on income-tax Form 1012, and an annual summary of these will be made on income-tax Form 1013. The annual return only will be verified. (Art. 43, ¶260, Reg. 33, Rev., Jan. 2, 1918.)

703 Where a debtor corporation, or its duly authorized withholding agent has made no payments of interest to non-resident alien individuals, or foreign corporations, having no office or place of business in the United States, or has withheld no tax from citizens or residents of the United States, whether or not the bonds upon which such interest accrued contain a tax free covenant clause, the exemption certificates filed in connection with such interest payments shall not hereafter be forwarded to Collectors of Internal Revenue, accompanied by a return on Form 1012, Revised, but shall be transmitted direct to the Commissioner of Internal Revenue, (Sorting Division), Washington, D. C., accompanied by a return on Form 1096. When used in this connection, Form 1096 shall be filed monthly, and in such cases, this office will not require that the return be sworn to. The number of exemption certificates thus transmitted, and the total amount of interest paid shall be entered on line 1 of the return.

In all cases, however, where a debtor corporation or its duly authorized withholding
704 agent has withheld the tax and is therefore required to render a return on Form 1012, Revised, all certificates received shall be accounted for on such monthly return, as directed by the instructions thereon.

705 All instructions issued by this office in conflict herewith, are hereby superseded and repealed. (T. D. 2687, April 1, 1918.)

706 Income tax Forms 1012, 1012A, 1012B, 1012C, and 1012D, as provided by T. D. 1914 of December 9, 1913 [Art. 50, Reg. 33], and as required to be used prior to the date of this regulation, are hereby superseded and from and after the date of this regulation the monthly list return of normal income tax withheld from interest paid on bonds and mortgages or deeds of trust or other similar obligations of corporations, etc., shall be in the following form (Form 1012 Revised):

While certificates are required to be listed alphabetically where the volume of busi-
707 ness is sufficiently large to require or make advisable a daily listing of certificates, in all such cases alphabetical listing will not be insisted upon, but all certificates must be packed and forwarded to this office in the order in which listed.

708 Where an extension sheet is required it shall be in the following form:

UNITED STATES INTERNAL REVENUE.
CONTINUATION SHEET FORM 1012A (revised)

Name of payee.	Address in full	Amount of income on which withholding agent is liable for tax.	Amount of tax liability.
Totals brought forward...	.....	$.....	$.....
.....	.....	.....	.....
.....	.....	.....	.....
Totals carried forward...	.....	.....	.....

Return on this form shall be made monthly on or before the 20th day of the month
709 for income tax withheld in the preceding month.

710 The use of Forms 1012A, 1012B, 1012C, and 1012D are discontinued.

A summary of monthly list returns as herein provided and made during a calendar
711 year will be listed on income-tax Form 1013, and this annual list will be filed with the collector of internal revenue on or before March 1 of each year and will constitute the annual withholding return of debtor corporations or their withholding agents for normal income tax withheld from interest paid on bonds and mortgages or deeds of trust or other similar obligations of corporations, etc.

712 This return shall be printed on white paper, on sheets in size 16 by 10½ inches and shall be printed to read along the 10½-inch dimension, with horizontal and column lines and headings as shown by the form herein provided. These forms will be furnished by the Government.

713 Monthly list returns made on forms in use prior to the date of this regulation will be accepted by the Government up to and including April 20, 1917, but all monthly list returns for April and subsequent months shall be made on the form here prescribed. (T. D. 2468, Mar. 26, 1917.)

714 Withholding agents who are required to make monthly returns will, on or before the 20th day of each month, file with the collector for their respective districts such *returns* for the preceding month. (Art. 35, Reg. 33, Jan. 5, 1914.)

715 Such reports, etc., will be furnished by the debtor corporation to the collector of its district (i. e., the district in which its principal financial or business office is located), where, in such case, assessment will be made. (Art. 38, Reg. 33, Jan. 5 1914.)

716 The return should be filed with the collector of internal revenue for the district in which the debtor corporation is located or has its principal place of business, provided the said debtor corporation has not filed with the said collector of internal revenue a notice of the appointment of a duly authorized withholding agent in which case the debtor corporation is not required to file a monthly list return, Form 1012, or the corresponding annual list return, Form 1013. (T. D. 2135, Jan. 23, 1915.)

717 [Monthly list returns shall be] accompanied by all certificates relating thereto, and there shall also accompany said returns all certificates claiming exemptions * * * which are not required to be listed thereon. (Art. 35, Reg. 33, Jan. 5, 1914.)

718 **How to Enter Substitute Certificates of Collecting Agents on Monthly List Returns.**—[For substitute certificates read at ¶629.] All substitute certificates of collecting agents, authorized by regulations that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making monthly list returns debtors or withholding agents will enter the name and address of the collecting agent and the number of the substitute certificate issued in lieu of the original certificate containing the name and address of the owner of the bonds. (Art. 51, Reg. 33, Jan. 5, 1914.)

719 **Notice of Failure to File Return Served on Withholding Agent.**—Where the required returns are not filed within the prescribed time, either by individuals or corporations, notice on Form 1045 should in each case be sent to the delinquent. (Art. 196, Reg. 33, Jan. 5, 1914.)

720 Law ¶219. **Taxes Withheld to be Paid to the Government.**—[Every withholding agent] "shall on or before June fifteenth pay the tax to the official of the United States Government authorized to receive it." [¶3002.]

721 The normal tax of [8 or 10] per cent. shall be deducted and withheld *at the source*, and payment made to the collector of internal revenue as provided in the law, by the debtor, or his, her, or its duly appointed agent authorized to make such deduction and payment. (Art. 34, Reg. 33, Jan. 5, 1914.)

722 and shall pay the taxes so withheld to the collector of internal revenue for the district in which the said withholding agent resides or has his, her, or its principal place of business. (Art. 64, Reg. 33, Jan. 5, 1914.)

* * * * * * * * * * * *

723 In order that persons whose income tax is deducted and withheld and is to be paid at the source, may have an opportunity to file with the source which is required to withhold and pay tax for them, certificate claiming the benefit * * * exemptions provided for in [¶638 and ¶641.] * * * the law, withholding agents will not pay to collectors of internal revenue the tax withheld by them under the law until after the time for filing claim for * * * exemptions has expired. (T. D. 1965, Mar. 23, 1914.)

724 * * * , collectors will delay reporting for assessment taxes remaining in the hands of withholding agents, until the annual reports of such agents, which must be filed not later than March 1 in each year, are received. (Art. 189, Reg. 33, Jan. 5, 1914.)

725 * * * The withholding agent will not, however, forward to the collector amounts withheld by him until notices of assessment are received from the collector. (Art. 33, Reg. 33, Jan. 5, 1914.)

726 The withholding agent is not required by law to forward to the Collector the tax withheld by him until he has received notice of assessment and then, like the tax assessed in other cases, payment should be made by him on or before June 30 [15] of each year. (T. D. 2131, Jan. 18, 1915.)

727 **Tax having been Deducted at the Source is not to be Again Deducted by Agent or other Person.**—No other person, firm, or organization, in whatever capacity acting, having the receipt, custody, or disposal of any income, as herein provided, shall be required to again deduct and withhold the normal tax of 1 [8] per cent. thereon. (Art. 34, Reg. 33, Jan. 5, 1914.)

728 Law ¶220. **Withholding Agents are Liable for the Tax to be Withheld.**—"Every such individual, corporation, or partnership is hereby made liable for such tax and"

729 Law ¶221. **Withholding Agents are Indemnified.**—[Every withholding agent] "is hereby indemnified against the claims and demands of any individual, corporation, or partnership for the amount of any payments made in accordance with the provisions of this section."

730 Law ¶222. **Income on which Tax has been Withheld to be Included in Recipient's Return of Income.**—"(d) Income upon which any tax is required to be withheld at the source under this section shall be included in the return of the recipient of such income,"

731 Law ¶223. **Amount of Tax Withheld at the Source to be Credited against Amount of Tax as computed in Creditor's Return.**—"but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return."

732 If for any reason there is included in the return which a foreign corporation is required to make of all income received from sources within the United States any income upon which tax has been withheld at the source, such foreign corporation may take credit against the amount of tax due for the amount of the tax so withheld at the source; provided a statement is attached to the return setting forth the source and amount of the income upon which the tax was so withheld. (Art. 201, ¶602, Reg. 33, Rev., Jan. 2, 1918.)

733 **Refund, on Return.**—Where, upon filing return of income, it appears that a non-resident alien is not liable for income tax, but, nevertheless, income tax shall have been withheld at the source, in order to obtain a refund on the basis of the showing made by the return there shall be attached to the return a statement showing accurately the amounts of tax withheld, with the names and post-office addresses of all withholding agents. (Art. 32, ¶222, Reg. 33, Rev., Jan. 2, 1918.)

734 Law ¶224. **If Tax Required to be Withheld is Paid by Creditor, such Tax is not to be Recollected from the Withholding Agent.**—"(e) If any tax required under this section to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent;"

735 Law ¶225. **If Tax Required to be Withheld be Paid by the Creditor no Penalty Attaches for Innocent Failure to make Return or to Pay Tax.**—"nor in cases in which the tax is so paid shall any penalty be imposed upon or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment."

Penalty for Failure to Make Return and to pay Tax. [Read at ¶1572].

736 Law ¶80. **Surtax on Net Income: All Individuals.**—"Sec. 211. (a) That, in lieu of the taxes imposed by subdivision (b) of section 1 [surtax on individuals—income tax] of the Revenue Act of 1916 and by section 2 [surtax on individuals—war-income tax] of the Revenue Act of 1917, but in addition to the normal tax imposed by section 210 [¶471] of this Act, there shall be levied, collected, and paid for each taxable year upon the net income of every individual, a surtax equal to the sum of the following:" [¶2829.]

737 Law ¶81. **Surtax Rates.**—"1 per centum of the amount by which the net income exceeds $5,000 and does not exceed $6,000;

2 per centum of the amount by which the net income exceeds $6,000 and does not exceed $8,000;

3 per centum of the amount by which the net income exceeds $8,000 and does not exceed $10,000;

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4 per centum of the amount by which the net income exceeds $10,000 and does not exceed $12,000;

5 per centum of the amount by which the net income exceeds $12,000 and does not exceed $14,000;

6 per centum of the amount by which the net income exceeds $14,000 and does not exceed $16,000;

7 per centum of the amount by which the net income exceeds $16,000 and does not exceed $18,000;

8 per centum of the amount by which the net income exceeds $18,000 and does not exceed $20,000;

9 per centum of the amount by which the net income exceeds $20,000 and does not exceed $22,000;

10 per centum of the amount by which the net income exceeds $22,000 and does not exceed $24,000;

11 per centum of the amount by which the net income exceeds $24,000 and does not exceed $26,000;

12 per centum of the amount by which the net income exceeds $26,000 and does not exceed $28,000;

13 per centum of the amount by which the net income exceeds $28,000 and does not exceed $30,000;

14 per centum of the amount by which the net income exceeds $30,000 and does not exceed $32,000;

15 per centum of the amount by which the net income exceeds $32,000 and does not exceed $34,000;

16 per centum of the amount by which the net income exceeds $34,000 and does not exceed $36,000;

17 per centum of the amount by which the net income exceeds $36,000 and does not exceed $38,000;

18 per centum of the amount by which the net income exceeds $38,000 and does not exceed $40,000;

19 per centum of the amount by which the net income exceeds $40,000 and does not exceed $42,000;

20 per centum of the amount by which the net income exceeds $42,000 and does not exceed $44,000;

21 per centum of the amount by which the net income exceeds $44,000 and does not exceed $46,000;

22 per centum of the amount by which the net income exceeds $46,000 and does not exceed $48,000;

23 per centum of the amount by which the net income exceeds $48,000 and does not exceed $50,000;

24 per centum of the amount by which the net income exceeds $50,000 and does not exceed $52,000;

25 per centum of the amount by which the net income exceeds $52,000 and does not exceed $54,000;

26 per centum of the amount by which the net income exceeds $54,000 and does not exceed $56,000;

27 per centum of the amount by which the net income exceeds $56,000 and does not exceed $58,000;

28 per centum of the amount by which the net income exceeds $58,000 and does not exceed $60,000;

29 per centum of the amount by which the net income exceeds $60,000 and does not exceed $62,000;

30 per centum of the amount by which the net income exceeds $62,000 and does not exceed $64,000;

31 per centum of the amount by which the net income exceeds $64,000 and does not exceed $66,000;

32 per centum of the amount by which the net income exceeds $66,000 and does not exceed $68,000;

33 per centum of the amount by which the net income exceeds $68,000 and does not exceed $70,000;

34 per centum of the amount by which the net income exceeds $70,000 and does not exceed $72,000;

35 per centum of the amount by which the net income exceeds $72,000 and does not exceed $74,000;

36 per centum of the amount by which the net income exceeds $74,000 and does not exceed $76,000;

37 per centum of the amount by which the net income exceeds $76,000 and does not exceed $78,000;

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38 per centum of the amount by which the net income exceeds $78,000 and does not exceed $80,000;

39 per centum of the amount by which the net income exceeds $80,000 and does not exceed $82,000;

40 per centum of the amount by which the net income exceeds $82,000 and does not exceed $84,000;

41 per centum of the amount by which the net income exceeds $84,000 and does not exceed $86,000;

42 per centum of the amount by which the net income exceeds $86,000 and does not exceed $88,000;

43 per centum of the amount by which the net income exceeds $88,000 and does not exceed $90,000;

44 per centum of the amount by which the net income exceeds $90,000 and does not exceed $92,000;

45 per centum of the amount by which the net income exceeds $92,000 and does not exceed $94,000;

46 per centum of the amount by which the net income exceeds $94,000 and does not exceed $96,000;

47 per centum of the amount by which the net income exceeds $96,000 and does not exceed $98,000;

48 per centum of the amount by which the net income exceeds $98,000 and does not exceed $100,000;

52 per centum of the amount by which the net income exceeds $100,000 and does not exceed $150,000;

56 per centum of the amount by which the net income exceeds $150,000 and does not exceed $200,000;

60 per centum of the amount by which the net income exceeds $200,000 and does not exceed $300,000;

63 per centum of the amount by which the net income exceeds $300,000 and does not exceed $500,000;

64 per centum of the amount by which the net income exceeds $500,000 and does not exceed $1,000,000;

65 per centum of the amount by which the net income exceeds $1,000,000."

Application of the Rates for Fiscal Year Embracing Parts of Calendar Years With Differing Rates.—[Read at ¶1678.]

738 Law ¶82. **Maximum Surtax Limitation in the Case of the Sale of Certain Mines, or Oil or Gas Wells.**—"(b) In the case of a bona fide sale of mines, oil or gas wells, or any interest therein, where the principal value of the property has been demonstrated by prospecting or exploration and discovery work done by the taxpayer, the portion of the tax imposed by this section attributable to such sale shall not exceed 20 per centum of the selling price of such property or interest."]¶2831.]

739 **Surtax Computed on Separate Incomes of Husband and Wife.**—The regulations of the department requiring the incomes of husband and wife to be combined and authorizing the aggregate exemption * * * from such combined income are applicable for the purpose of the *normal tax only*. The additional, or surtax, imposed by the act will be computed on the basis of the separate income of each individual; that is, on the amount of each individual's income in excess of the minimum amounts upon which the surtax at the graduated rate is to be calculated. (T. D. 2090, Dec. 14, 1914.)

740 The separate incomes of husband and wife should not be combined in a return of income for the purpose of assessing the additional or surtax. (T. D. 2137, Jan. 30, 1915.)

741 **All Taxable Income Received by Beneficiaries Through Fiduciaries is Subject to Surtax.**—A beneficiary is liable for the normal tax upon the amount of net income derived by him from a taxable source through a fiduciary * * * and is also liable for the additional tax assessable on the amount of net income received by him in excess of [$5,000], and in order to determine whether the net income of a beneficiary is or is not in excess of [$5,000] and subject to the additional tax the amount derived by him from an estate and all other taxable sources is required to be shown on his personal annual return. (T. D. 2090, Dec. 14, 1914.)

742 **Corporations Are Not Subject to Surtax.**—Corporations coming within the terms of this law are subject to the normal tax only; that is, a tax computed at a level rate of [12] per cent of their entire net income regardless of the amount of such net income. (Art. 185, Reg. 22, Jan. 5, 1914.)

743 **Dividends Received by Beneficiaries Through Fiduciaries are Subject to Surtax.**—Dividends in the hands of a fiduciary and belonging to a beneficiary are not subject to the normal tax, but will be subject to the additional tax to the beneficiary whenever the beneficiary's income from all taxable source is in excess of [$5,000]. (T. D. 2090, Dec. 14, 1914.)

744 **Specific Exemption in its Relation to the Additional Tax.**—Personal exemptions from tax are granted in respect of the normal income tax only. Where the total of allowable exemptions and credits exceeds the amount of net income, the excess of such exemptions may not be availed of as against the additional tax. (Art. 14, ¶154, Reg. 33, Rev., Jan. 2, 1918.)

745 In Hyman Cohen vs. John Z. Lowe, Jr., Collector, District Court, Southern District of New York, July 18, 1916 (234 Fed. 474) the Court held against the contention of the plaintiff, that, before assessing the additional tax on the excess of net income over $20,000, he should have been allowed an exemption of $3,000, as in the case of the normal tax (Act of 1913). [Comment.]

746 Law ¶197. **Individuals May Be Subject to Normal Tax and to Surtax on Undistributed Profits of Certain Corporations.**—"Sec. 220. That if any corporation, however created or organized, is formed or availed of for the purpose of preventing the imposition of the surtax upon its stockholders or members through the medium of permitting its gains and profits to accumulate instead of being divided or distributed, such corporation shall not be subject to the tax imposed by section 230 [¶1662], but the stockholders or members thereof shall be subject to taxation under this title in the same manner as provided in subdivision (e) of section 218 [¶1305] in the case of stockholders of a personal service corporation, except that the tax imposed by Title III [war-profits and excess-profits tax] shall be deducted from the net income of the corporation before the computation of the proportionate share of each stockholder or member." [¶2995.]

747 Law ¶198. "The fact that any corporation is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business, shall be prima facie evidence of a purpose to escape the surtax;"

748 Law ¶199. "but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the tax in such case unless the Commissioner certifies that in his opinion such accumulation is unreasonable for the purposes of the business."

749 Law ¶200. "When requested by the Commissioner, or any collector, every corporation shall forward to him a correct statement of such gains and profits and the names and addresses of the individuals or shareholders who would be entitled to the same if divided or distributed, and of the amounts that would be payable to each."

750 Subdivision 2 of paragraph A, income-tax law of October 3, 1913 [¶746 et seq. above], imposes no duty on the taxpayer to ascertain his distributive interest in the undivided surplus of corporations for the purpose of making return of the amount, in addition to the amount of dividends declared on his stock, unless the [Commissioner] has certified that, in his opinion, such accumulation is unreasonable for the purpose of the business. (T. D. 2135, Jan. 23, 1915.)

751 Law ¶7. **"Secretary" Defined.**—"The term 'Secretary' means the Secretary of the Treasury;"

752 Law ¶8. **"Commissioner" Defined.**—"The term 'Commissioner' means the Commissioner of Internal Revenue;"

753 Law ¶9. **"Collector" Defined.**—"The term 'collector' means collector of internal revenue;"

754 Law ¶83. **Net Income Defined.**—"Sec. 212. (a) That in the case of an individual the term 'net income' means the gross income as defined in section 213 [¶763,] less the deductions allowed by section 214 [¶1019]." [¶2832.]

755 Law ¶84. **Net Income to Be Based on Taxpayer's Annual Accounting Period.**—"(b) The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer;" [¶2833+.]

756 Law ¶85. **Basis of Computation to Reflect Income Clearly.**—"but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the Commissioner does clearly reflect the income." [¶2834.]

757 Law ¶86. **Basis of Computation to be the Calendar Year in Certain Instances.**—"If the taxpayer's annual accounting period is other than a fiscal year as defined in section 200 [¶478] or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year." [¶2839.]

758 Law ¶87. **Changing From One Accounting Period to Another.**—"If a taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the Commissioner, be computed on the basis of such new accounting period, subject to the provisions of section 226 [¶1479]." [¶2840.]

759 An individual keeping accounts upon any basis other than that of actual receipts and disbursements, unless such other basis does not clearly reflect his income may, subject to regulations made by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, make his return upon the basis on which his accounts are kept. (Art. 24, ¶167, Reg. 33, Rev., Jan. 2, 1918.)

760 Returns should be made on the basis of receipt unless the individual liable for the return keeps accounts on some other basis which will clearly reflect his income. (Art. 26, ¶171, Reg. 33, Rev., Jan. 2, 1918.)

761 Law ¶12. **"Taxpayer" Defined.**—"The term 'taxpayer' includes any person, trust or estate subject to a tax imposed by this Act;"

762 Law ¶2. **"Person" Defined.**—"The term 'person' includes partnerships and corporations as well as individuals;"

763 Law ¶88. **Gross Income Defined.**—"Sec. 213. That for the purposes of this title (except as otherwise provided in section 233, [¶1788]) the term "gross income"—

[Read at ¶2841.]

764 Law ¶89. "(a) Includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, and all other officers and employees, whether elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof, or the District of Columbia, the compensation received as such), of whatever kind and in whatever form paid,"

[For salaries of officials of a State or political subdivision thereof see ¶1013 and ¶2863.]

765 Law ¶90. "or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property;"

766 Law ¶91. "also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit,"

767 Law ¶92. "or gains or profits and income derived from any source whatever,"

768 Law ¶93. "The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under subdivision (b) of section 212 [¶755], any such amounts are to be properly accounted for as of a different period; but" ["Gross income does not include," for which see ¶944.]

769 Gross income includes gains or profits and income derived from any source whatever except such as is specifically exempted from income tax under provisions of section 4, act of September 8, 1916, as amended by act of October 3, 1917. [Subdiv. (b) of Sec. 213 (¶944) Act of 1918.] (Art. 4, ¶12, Reg. 33, Rev., Jan. 2, 1918.)

770 Law ¶29. **"Dividends" Defined.**—"Sec. 201. (a) That the term 'dividend' when used in this title (except in paragraph (10) of subdivision (a) of section 234 [¶2248]) means"

[For "dividends" in Reg. No. 45, read at ¶3094.]

771 Law ¶30. Distribution by Corporations in General.—"(1) any distribution made by a corporation, other than a personal service corporation, to its shareholders or members, whether in cash or in other property or in stock of the corporation, out of its earnings or profits accumulated since February 28, 1913, or"

772 Law ¶31. Distribution by Personal Service Corporations.—"(2) any such distribution made by a personal service corporation out of its earnings or profits accumulated since February 28, 1913, and prior to January 1, 1918."

773 Dividends Paid with Securities.—Dividends declared by a corporation and paid with securities in which the surplus of the corporation has been invested, regardless of the character of such securities, is to be accounted for as a dividend for income-tax purposes by the recipients of same to the extent that it represents a distribution of surplus accrued to the corporation since March 1, 1913. (Art. 4, ¶27, Reg. 33, Rev., Jan. 2, 1918.)

774 Dividends Paid in Liberty Bonds.—The appended opinion of the Attorney General on the question of exemption from income tax of corporation dividends paid in the form of Liberty Loan bonds is published for the information of internal-revenue officers and others concerned. (T. D. 2512, June 8, 1917.)

THE SECRETARY OF THE TREASURY:

775 SIR: Pursuant to section 356 of the Revised Statutes you ask my opinion upon the following questions arising under the administration of your department:

(1) Whether the stockholders of a corporation receiving a dividend declared
776 payable and distributable in bonds issued under the act of Congress approved April 24, 1917, will have to pay an income tax.

(2) Whether a corporation owning these bonds would be to that extent exempt
777 from excise taxes, franchise taxes, and other corporation taxes of the United States and of the several States.

I am of the opinion that an affirmative answer must be returned to the first question
778 and a negative answer to the second.

The Act of April 24, 1917, provides as to the bonds thereby authorized that—
779 The principal and interest thereof * * * shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority.

Like every exemption from taxation, this provision must be literally construed
780 and can not be extended beyond its precise terms. It protects an owner of these bonds from any tax of whatever character, except estate or inheritance taxes, levied upon them by reason of his possession and ownership; but a tax levied upon one's net income or annual gain can not be evaded because the income or gain happens to be liquidated by the delivery of a certain number of these bonds or other nontaxable securities. Such a tax is upon the income itself as an entirety and not upon the specific articles into which this income is finally transmuted. When these bonds, therefore, are used as a medium of payment, whether in the discharge of a private debt or a corporate dividend, the profit or gain to the recipient is nevertheless subject to income tax.

Similar principles control in answering your second question. I assume that
781 in speaking of "excise taxes, franchise taxes, and other corporation taxes" you refer to those taxes which are laid, not upon the property of a corporation by reason of possession or ownership, but upon the value of the exercise of corporate privileges—a value which may be measured by the size of its annual income, the amount of its capital stock, or such other standard of measurement as the taxing power may select.

Such a tax, for instance, was the special excise tax upon corporations under the act
782 of August 5, 1909 (36 Stat., 11,112), discussed by the Supreme Court of the United States in the case of Flint *v.* Stone Tracy Co. (220 U. S., 107), in which the court said:

It is therefore well settled by the decisions of this court that when the sovereign
783 authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is nontaxable. Applying that doctrine to this case, the measure of taxation being the income of the corporation from all sources, as that is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes in part at least, property which as such could not be directly taxed (p. 165).

The special excise tax levied upon corporations by the act of September 8, 1916
784 (39 Stat., 756, 789), and measured by the fair value of their capital stock is a tax of the same general character, imposed with respect to the carrying on or doing business by such corporations, and the rule laid down in the case of Flint *v.* Stone Tracy Co. applies equally to it. Quoting again from that decision: * * * The distinction

lies between the attempt to tax the property as such and to measure a legitimate tax upon the privileges involved in the use of such property (p. 163).

Respectfully,

T. W. Gregory, *Attorney General.* (T. D. 2512, June 8, 1917.)

This office has before it your letter of June 8, 1917, asking whether dividends
785 paid in Liberty Loan bonds will be taxable to shareholders who receive them.

¶In reply you are advised that, in fairness to all concerned, inquiries similar to that submitted by you were forwarded to the Attorney General for his opinion. ¶In accordance with the Attorney General's opinion it is held that under the Income Tax Act of September 8, 1916, Liberty Loan bonds purchased from the earnings or profits of a corporation, which have accrued since March 1, 1913, will constitute income to the stockholders to the amount of the earnings or profits invested by the corporation in the bonds. If the bonds were purchased from earnings or profits accrued prior to March 1, 1913, they would not, of course, represent taxable income; and if the surplus from which they were purchased accrued in part before and in part after March 1, 1913, they would represent taxable income, under the provisions of law applicable to dividends, to the amount of the surplus accrued since that date. ¶You are probably aware of the present provisions of law that dividends are subject to super tax, only, in the hands of individuals, and that an individual is not liable for the super tax until his net income exceeds $20,000 [$5,000]. ¶The income derived by an individual from the interest paid on Liberty Loan bonds does not constitute taxable income, whether the bonds have been received as a dividend or otherwise. [This sentence refers to the Liberty 3½% Bonds specifically but is applicable, to a limited extent, to all Liberty Bond issues. Read at ¶981.] (Letter to Lee, Higginson & Company, Boston, signed by Deputy Commissioner L. F. Speer, and dated June 30, 1917.)

786 **Determination of Cash Value to the Shareholder of a Dividend Paid in Liberty Bonds.**—Acknowledgment is made of your letter of October 23, 1918, reading in part as follows:

"Where a corporation distributed Liberty Bonds among its stockholders as a dividend:

1. Should an individual stockholder make return of that dividend for surtax purposes at the par value or at the market value of the Liberty Bonds?

2. If the corporation bought the Liberty Bonds at 99.25 and the market value thereof when received by the stockholder was 94.25, should the stockholder make return of the dividend at 99.25 or at 94.25?"

787 In reply you are advised that, for the purposes of the income tax, income, in both instances, should be predicated on the cash value of the Liberty Bonds at the time of their receipt by the stockholders. (Letter to Ropes, Gray, Boyden & Perkins, Boston, Mass., signed by Deputy Commissioner L. F. Speer, and dated November 12, 1918.)

788 **Interest on Exempt Bonds on Distribution as Dividend.**—Interest on State, municipal, and United States bonds received by corporations is not taxable to the corporation. Upon amalgamation with other funds of the corporation such income loses its identity. When distributed to stockholders as a dividend, the entire amount of the dividend is subject to inclusion in returns of income for the purposes of the income tax. (Art. 4, ¶42, Reg. 33, Rev., Jan. 2, 1918.)

789 **Scrip Dividends.**—The dividend paid by the corporation [in 1914] is income to the stockholder for 1914 * * * . The dividends must be included in the return and at the face value of the scrip.

For income tax purposes this transaction is held to be a payment in cash of the divi-
790 dend, and an investment of the cash in the scrip. (Extract from letter to Oudin, Kilbreth & Schackno, signed by Deputy Commissioner L. F. Speer, and dated Jan. 19, 1915.)

791 **Dividends Paid by a Foreign Corporation.**—Dividends declared and paid by a foreign corporation which derives its entire income from business done wholly within the United States and pays, under the provisions of the Federal income-tax law, a tax upon its net income, should be treated in the same manner as dividends from domestic corporations. (T. D. 2090, Dec. 14, 1914.)

792 **Income From Private Banks Considered as Dividends.**—In the case of private banks which have the form of corporations and which are held to be associations within the meaning of the Federal income-tax law, it is not the purpose of this office to assess the income tax against such banking associations and then also against the individual members of the association.

Income which the members of the association receive from the bank because of their
793 investments therein will be considered dividends, * * * . (T. D. 2152, Feb. 12, 1915.)

794 Private banks which have the form of corporate organizations, elect officers and a board of managers, have a distinctive name, a fixed situs, and distribute their net earnings upon the basis of the amount of capital invested by the members or owners, are held to be associations within the meaning of the Federal income tax law, and in their organized capacity should make returns of annual net income and pay any income tax thereby shown to be due.

795 The holders of the stock or the owners of the bank will be exempt from the normal tax to the extent of the dividends or earnings which they receive from such private banks as make returns in their organized capacity and pay income tax in accordance therewith. * * * . (T. D. 2137, Jan. 30, 1915.)

796 **Taxes Paid by Bank for Owners of Bank Stock Considered as Dividends.**—Taxes assessed against the stockholders of a bank and paid by the bank in behalf of the stockholders do not constitute an allowable deduction from the gross income of the bank, but do constitute an allowable deduction in the return of the individual * * * . The amount of taxes so paid should be included in his return as income, the said amount being considered as an additional dividend to the amount of the taxes paid. (T. D. 2135, Jan. 23, 1915.)

797 **Profits of Limited Partnerships Considered as Dividends.**—The profits of limited partnerships making returns in the same manner as corporations make returns will be treated the same as dividends of corporations and will be returned in the returns of individuals in the same manner as are dividends upon the stock of corporations; that is to say, the dividends received from such limited partnerships will not be subject to the normal tax in the hands of the members of the partnership receiving the same. (T. D. 2137, Jan. 30, 1915.)

798 **Dividends Paid on Life Insurance Policies.**—Dividends paid on life insurance policies that have not matured, whether such dividends are drawn in cash by the insured or applied to the reduction of the annual premium due, are not considered items of taxable income under the law, and should be excluded from a return of income.

799 Dividends from paid-up policies, however, are considered income to the recipient, and must be included in the annual return of income * * * . They are considered the same as dividends or net earnings from corporations subject to a like tax and may * * * . (T. D. 2137, Jan. 30, 1915.)

800 Law ¶32. **Earnings and Profits to be Distributed First.**—"(b) Any distribution shall be deemed to have been made from earnings or profits unless all earnings and profits have first been distributed."

801 Reference is made to your letter of April 22, 1918, relative to the following: "Assuming a corporation to have undivided surplus or profits of $500,000; to have revalued its assets, resulting in an increase of $1,000,000; and to have declared a stock dividend amounting to $750,000—said by the corporation to have been out of the revaluation increase, will the Treasury Department accept the statement of the corporation, or will it insist on $500,000 (or two-thirds of the stock dividend) as representing the undivided surplus or profits—and hence taxable—and the balance of $250,000 (or one-third) out of the increase due to the revaluation and hence not taxable?" ¶In reply, you are advised that if the undistributed surplus or profits of the corporation accumulated since March 1, 1913, are sufficient to pay the $750,000 dividend, then all of such dividend will be taxable. If only $500,000 surplus is on hand on the date of payment of the dividend, then the amount of the dividend that is over and above such surplus on hand will be exempt. ¶If there is no surplus on hand on the date of payment of the dividend, then all of the dividend will be tax exempt. In short, the dividend is taxable to the extent of the undivided profits (accumulated since March 1, 1913) on hand on the date of payment of such dividend [Read ¶811]. (Letter to Hornblower and Weeks, Boston, Mass., signed by Deputy Commissioner L. F. Speer, and dated May 14, 1918.)

802 Law ¶33. **Earnings and Profits Since February 28, 1913, to be Distributed First by Corporations Generally.**—"Any distribution made in the year 1918 or any year thereafter shall be deemed to have been made from earnings or profits accumulated since February 28, 1913, or,"

803 Law ¶34. **Earnings and Profits Most Recently Accumulated to be Distributed First by a Personal Service Corporation.**—"in the case of a personal service corporation, from the most recently accumulated earnings or profits;"

804 Any distribution made to shareholders in the year 1917 [1918] or subsequent years * * * shall be deemed to have been made from the most recently accumulated undivided surplus or profits, and shall constitute income of the distributee for the year in which received, * * * .

Thus, if a corporation distributed dividends in 1917 [1918], such dividends will be
805 deemed to have been paid from the earnings of 1917 [1918], and the recipient, if an individual, will be liable to additional tax, if any, * * * at the rates for the year 1917 [1918], * * * . (Art. 107, ¶374 and ¶375, Reg. 33, Rev., Jan. 2, 1918.)

806 **Relation of Income and War Excess Profits Taxes Paid or Accrued to Dividend Distributions.**—In determining the source of earnings from which a particular distribution is made a corporation is, however, permitted to treat the undivided profits and surplus of the current year as reduced by payments for income and excess profits taxes or if keeping its accounts upon an accrual basis by proper reserves for such taxes, although such payments or reserves are not deductible in computing the income of the corporation for income and excess profits taxes. (T. D. 2700, April 16, 1918.)

807 Receipt is acknowledged of your letter of the 23d ult., in which you refer to Treasury Decision 2700, especially to the provisions of the last paragraph but one [¶806] contained therein and ask for certain information relative thereto. You ask to be advised * * * whether the earnings for the first half of 1918 may be charged with the corresponding taxes accruing during that period for the purpose of:

"(*a*) Properly apportioning dividends declared during the first half of 1918; * * *

808 In reply you are informed that while income and war excess profits taxes are not deductible in preparing a return of a corporation for the year 1917 and subsequent years, if the corporation keeps its books on an accrued basis, liabilities for all taxes accruing during the taxable period are proper charges in determining the earnings of the different periods during the year. Therefore, it is believed that question (a) may be answered by stating that taxes accrued during the first half of the year 1918 are properly to be considered in determining the amount of earnings out of which dividends could be paid during that period. (Letter to Smith, Robertson and Moorhouse, Seattle, Wash., signed by Deputy Commissioner L. F. Speer, and dated May 13, 1918.)

809 **The Most Recently Accumulated Undivided Profits and Surplus Shall Still Be Deemed to have been Distributed on Payment of a Dividend even though such Funds are Invested in United States Bonds.** In reply you are advised that in accordance with Treasury Decision 2700 investments in obligations of the United States issued after September 1, 1917, may be treated as made from any earnings which the corporation may designate; but, as the investment of earnings does not prevent them from being distributed as dividends, earnings used in the purchase of such obligations will not be relieved from taxation as dividends. ¶In the case cited by you, if the corporation distributed a dividend in the year 1918, as it would appear is contemplated, and it has no undistributed earnings for the year 1918, at the time of payment, the dividend will be deemed to have been paid from the undistributed earnings of the year 1917, regardless of the fact that such earnings have been invested in obligations of the United States issued after September 1, 1917. (Letter to Arthur Young & Company, Kansas City, Mo., signed by Deputy Commissioner L. F. Speer, and dated May 27, 1918.)

810 Law ¶35. **Earnings and Profits Prior to March 1, 1913, Distributed Tax Free.**—"but any earnings or profits accumulated prior to March 1, 1913, may be distributed in stock dividends or otherwise, exempt from the tax, after the earnings and profits accumulated since February 28, 1913, have been distributed."

811 Law ¶36. **Stock Dividends.**—"(c) A dividend paid in stock of the corporation shall be considered income to the amount of the earnings or profits distributed."

[Read at ¶3097.]

812 Misapprehension exists as to the effect of the decision of the Supreme Court in the case of Towne vs. Eisner [(245 U. S. 418) see ¶2738.], handed down January 7, 1918. In this opinion it was held that under the Act of October 3, 1913, a stock dividend declared by a corporation January 2, 1914, was not properly regarded as income. It does not necessarily follow, however, that no stock dividends are to be held taxable under the provisions of the Acts of September 8, 1916, and October 3, 1917.

The Act of October 3, 1913, which was the only Act before the Court in the case,
813 contained no provision expressly providing for treating stock dividends as income, and the decision of the Court was to the effect that the Act was not to be construed as taxing such dividends. The Court did not decide that such dividends cannot be income within the meaning of the Sixteenth Amendment, but expressly recognized that the word "income" may have a different meaning in the Statute from the meaning in the Constitution.

The Act of September 8, 1916, contains an express provision taxing stock dividends
814 declared and paid out of earnings accrued since March 1, 1913. In the absence of a decision as to the legal effect of these express provisions contained in the later Acts, the Bureau of Internal Revenue naturally will continue to be governed by the express provisions of the later Acts in reference to stock dividends. (Statement issued to Collectors and Agents, signed by Commissioner Daniel C. Roper, and dated Jan. 10, 1918.)

815 **Stock Dividends Under the Act of September 8, 1916.**—(Decision. Macomber v. Eisner, Collector, U. S. District Court, Southern District of New York, Jan. 23, 1919.) [Comment: This is a suit for the recovery of tax paid under the Act of September 8, 1916, on a "stock dividend" received by the plaintiff. The contention of counsel for the plaintiff, Murray, Prentice & Howland, of New York, is that the provision of the taxing Act by which so-called "stock dividends" are in terms stated to be income, to be taxable as such to the same extent as are cash dividends, is unconstitutional, because to tax "stock dividends" is to tax capital or principal, and such a tax may not be imposed except as other direct taxes are laid, that is, by apportionment among the several states according to population. Judge Mayer, of the United States District Court, Southern District of New York, on January 23, 1919, overruled the demurrer of the Government to the complaint upon the authority of Towne v. Eisner, 245 U. S. 418 [¶2738], and Peabody v. Eisner, 247 U. S. 347 [¶2802]. It is understood that the Government will immediately appeal from this decision to the United States Supreme Court and that the case will be advanced on the docket so that speedy adjudication may be looked for, perhaps during the present term. Mr. Charles E. Hughes and Mr. George Welwood Murray presented the case for the plaintiff. Inasmuch as a like provision relative to "stock dividends" appears in the Act of September 8, 1916, as amended by the Act of October 3, 1917, and also in the Revenue Bill (The Revenue Act of 1918) now pending before Congress, the final judgment in Macomber v. Eisner will be controlling for the Revenue Acts of 1916, 1917 and 1918. The question as to the liability of "stock dividends" to tax under the Act of October 3, 1913, was disposed of in Towne v. Eisner above cited, where the decision by the Supreme Court on January 7, 1918, was against the Government's contention. Counsel in the Macomber case were also counsel in the Towne case.

816 The opinion in the above case consists merely of an endorsement on the demurrer, as follows:

"Demurrer overruled on the authority of Towne v. Eisner, 245 U. S. 418. See also Peabody v. Eisner, 247 U. S. 347.

JULIUS M. MAYER,
U. S. D. J.

January 23, 1919.

Note: In reading at ¶2492 (Refund of taxes paid on "stock dividends" under
817 Act of October 3, 1913) and ¶2496 (Refund of taxes paid on account of "stock dividends" under Revenue Act of 1916 and 1917, in event such taxes are hereafter held to have been erroneously assessed), it is to be borne in mind that until the Supreme Court has affirmed the decision of the lower court the status of "stock dividends" received since December 31. 1915, remains unchanged, officially.]

818 **Determination of Profit or Loss from Disposition of Stock Received Through Stock Dividend.**—By Sections 2 (a) and 31 (a) of the Income Tax Act of September 8, 1916, as amended, taxable income includes stock dividends paid by a corporation in 1916 or subsequent years out of its earnings or profits accrued since March 1, 1913, to the amount of the earnings or profits so distributed, and excludes stock dividends paid in 1916 or subsequent years out of surplus other than earnings or profits accrued since March 1, 1913. In Towne v. Eisner, 245 U. S. 418 [¶2738] stock dividends paid in 1913, 1914 or 1915 out of surplus however created were held not to be taxable income under the Income Tax Act of October 3, 1913.

Section 31 (b) of the Act of September 8, 1916, as amended, Article 107 [¶804] of
819 the Income Tax Regulations, and Treasury Decisions 2659 [¶834] of February 28, 1918, and 2678 [¶840] of March 23, 1918, provide the method of determining out of what earnings or profits a dividend declared in 1917 or subsequent years is deemed to have been paid.

For the purpose of ascertaining under the Income Tax Act the gain or loss derived
820 from the sale of stock or other property, its cost, or if acquired before March 1, 1913, its fair market price or value as of March 1, 1913, is evidently the basis to be sought. Such basis once found, the problem is resolved into a matter of subtraction. To avoid unnecessary complication "cost" is used herein to include also, where required, "fair market price or value as of March 1, 1913."

For the purpose, then, of ascertaining the gain or loss derived from the sale of
821 stock of a corporation received as a dividend, or from the sale of the stock in respect of which such dividend was paid, the cost of such stock is to be determined in accordance with the following rules:

1. In the case of stock (a) received as a dividend in 1913, 1914 or 1915 out of
822 surplus, however created, or (b) received as a dividend in 1916 or subsequent years out of surplus other than earnings or profits accrued since March 1, 1913, the cost of each share of new stock is the quotient of the cost of the old stock divided by the number of old and new shares added together.

2. In the case of the stock in respect of which any stock dividend was paid as
823 described under 1, the cost of each share of old stock is similarily the quotient of the cost of the old stock divided by the number of old and new shares.

3. In the case of stock received as a dividend in 1916 or subsequent years out of
824 surplus earnings or profits accrued since March 1, 1913, the cost of each share is the valuation at which it was returnable as income, as shown by the transfer of surplus to capital account on the books of the corporation, usually its par value.

4. In the case of the stock in respect of which any stock dividend was paid as
825 described under 3, the cost of each share is its original cost, regardless of any stock dividend.

Paragraph 28 of Regulations No. 33 (revised) is hereby amended to read as follows:
826 Stock dividends declared from earnings or profits accrued prior to March 1, 1913, or from surplus created by the revaluation of capital assets or by placing a value upon trademarks, goodwill, etc., do not represent a distribution of earnings or profits subject to tax as a dividend in the hands of the recipient shareholder [Read ¶800]. When stock received in payment of such a dividend, or stock in respect of which any such dividend was paid, is sold, the cost of each share of stock, whether old or new, for the purpose of ascertaining the gain or loss resulting from its sale, is the quotient of the cost of the old stock, if acquired on or after March 1, 1913, or its fair market price or value as of that date if acquired prior thereto, divided by the number of old and new shares added together. The profit so ascertained from the sale of such stock is income subject to both normal and additional tax and shall be accounted for in the shareholder's return rendered for the year in which the sale is made.

Paragraph 60 of Regulations No. 33 (revised) is hereby amended to read as follows:
827 When stock is sold from lots purchased at different times and at different prices and the identity of the lots can not be determined as to the dates of purchase, the stock sold shall be charged against the earliest purchases of such stock. The excess of the amount realized on the sale over the cost of the stock, or its fair market price or value as of March 1, 1913, if purchased before that date, will be the profit to be accounted for as income. In the case of stock received as a stock dividend out of surplus other than earnings or profits accrued since March 1, 1913, or of stock in respect of which any such dividend was paid, the cost of each share of such stock shall be ascertained as specified in paragraph 28 [¶826] hereof. (T. D. 2734, June 17, 1918.)

828 Law ¶37. **"Liquidating Dividends."**—"Amounts distributed in the liquidation of a corporation shall be treated as payments in exchange for stock or shares, and any gain or profit realized thereby shall be taxed to the distributee as other gains or profits." [¶3100.]

829 **Status of a Liquidating Dividend for Income Tax Purposes.**—If the * * * Manufacturing Company after such sale of its assets dissolves and distributes to its stockholders in liquidation the net proceeds of the sale, the stockholders would be held to be taxable upon so much of the amounts received by them respectively as is in excess of the cost to them of their stock. A liquidating dividend is not deemed to be taxable as an ordinary dividend but is to be treated as an amount received in exchange for the stock of the liquidating company. (Part of letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated January 13, 1919.)

830 **Dividend from Depletion Reserve.**—A reserve set up out of gross receipts and maintained by a corporation for the purpose of making good any loss or wasting of capital assets on account of depletion is not to be considered a part of the earned surplus of the company, but a reserve for the return or liquidation of capital. A dividend paid from such reserve will be considered a liquidating dividend and will not constitute taxable income to the stockholder except to the extent that the amount so received is in excess of the capital actually invested by the stockholder in the shares of stock held by him, and with respect to which the distribution was made. No dividend will, however, be deemed to have been paid from such reserve except to the extent that such dividend exceeds the surplus and undivided profits of the corporation at the time of such payment, and unless the books, records, published statements, etc., of the corporation clearly indicate a corresponding reduction of capital assets resulting from such payment. (Art. 4, ¶26, Reg. 33, Rev., Jan. 2, 1918.)

831 Law ¶38. **Certain Stock Dividends Apportionable.** "(d) If any stock dividend (1) is received by a taxpayer between January 1 and November 1, 1918, both dates inclusive, or"

832 Law ¶39. "(2) is during such period bona fide authorized or declared, and entered on the books of the corporation, and is received by a taxpayer after November 1, 1918, and before the expiration of thirty days after passage of this Act,"
[For date of passage see ¶2824.)

833 Law ¶40. "then such dividend shall, in the manner provided in Sec. 206 [¶1678], be taxed to the recipient at the rates prescribed by law for the years in which the corporation accumulated the earnings or profits from which such dividend was paid, but the dividend shall be deemed to have been paid from the most recently accumulated earnings or profits." [¶3098.]

[Applicable in part only, now.] From inquiries reaching this office, it is apparent
834 that there is confusion in the minds of the public as to the effect and application of the provisions of Section 31, of the Act of September 8, 1916, added by the Act of October 3, 1917, Section 1211, relative to the basis of taxation of certain dividends. That section, after defining dividends, provided that "any distribution made to the shareholders or members of a corporation * * * in the year 1917, or subsequent tax years, shall be deemed to have been made from the most recently accumulated undivided profits or surplus, and shall constitute a part of the annual income of the distributee for the year in which received, and shall be taxed to the distributee at the rates prescribed by law for the years in which such profits or surplus were accumulated * * * "

Regulations No. 33 (Revised), Article 107, paragraph 375, provide as follows:
835 "Thus, if a corporation distributed dividends in 1917, such dividends will be deemed to have been paid from the earnings of 1917, and the recipient, if, an individual, will be liable to additional tax, if any, and if a corporation to income tax, at the rates for the year 1917; unless it is shown to the satisfaction of the Commissioner of Internal Revenue, that at the time such dividends were paid, the earnings up to that time were not sufficient to cover the distribution, in which case the excess over the earnings of the taxable year will be deemed to have been paid from the most recently accumulated surplus of prior years, and will be taxed at the rate or rates for the year or years in which earned."

The rule may be applied as follows: Assume that a corporation with a capital
836 stock of $10,000,000 had surplus earnings of $500,000 a year in excess of the amount of dividends paid, making its total surplus on

December 31, 1915, $500,000, and on
December 31, 1916, $1,000,000.

On December 31, 1916, it declared a dividend of 2% payable February 15, 1917.
837 Unless it is shown to the satisfaction of the Commissioner of Internal Revenue that its earnings from January 1 to February 15 were insufficient for the payment of the $200,000 distributed as a dividend on February 15, the entire amount so distributed will be deemed to have been paid from earnings of 1917, and will be taxable in the hands of the stockholders at the 1917 rate. If, however, it is established to the satisfaction of the Commissioner of Internal Revenue that its earnings up to February 15 were but $100,000, then $100,000 or half of the total dividend paid by the corporation on February 15th would be taxable in the hands of the stockholders at the 1917 rates, and the other half would be deemed to have been paid from the surplus of the corporation of 1916 and would be taxable to the stockholders at the 1916 rate. If the dividend paid on February 15 were of such amount as to exceed the ascertained 1917 earnings up to the date of payment and also the 1916 surplus of the corporation, the amount of such excess would be deemed to have been paid from the surplus of 1915 and would be taxable in the hands of the stockholders at the 1915 rate.

All dividends received in 1917, even though paid by corporations from earnings
838 of previous years, constitute income to the recipients for 1917. The method of ascertaining the precise rate applicable to such portions of dividends received in 1917, as within the above rules are to be taxable at rates prevailing for previous years, is as follows: The amount of the income of the recipient to which the 1917 rates are applicable is first ascertained. To such amount is then added the amount of income of the recipient liable to tax at the 1916 rates and the table of 1916 rates applied to see in which brackets such income falls: the income liable to 1915 rates then added and the table of 1915 rates applied to it. For instance, an individual has $20,000 of income liable to 1917 rates and $25,000 of dividends liable to 1916 rates. The total would be $45,000 of which $20,000 would be taxable at the 1917 rates, $20,000 to $40,000 at the 1% additional tax rate under the 1916 table and $5,000 at the 2% additional tax rate under the same table. If he had another $25,000 dividend liable at 1915 rates, the first $5,000 would fall in the bracket between $20,000 an $50,000 at the additional 1% tax rate, and the other $20,000 in the second bracket of $50,000 to $75,000 at the 2% additional tax rate under the 1915 table.

In order that this office may verify the correctness of the rates, taxpayers reporting
839 dividends received at other than 1917 rate, under the various columns in Block F of Form 1040, will be required to render a statement at the time of filing the return, or at a subsequent date, showing the corporations from which dividends taking other than 1917 rates were received, with the amount of dividend received from each. (T. D. 2659, Feb. 28, 1918.)

[Special for 1917.] In view of the difficulty which many corporations are having in
840 determining whether earnings in 1917 up to the date of a dividend payment in that year were sufficient to cover the dividend paid, it is held that in any case where there is doubt upon the point, corporations may distribute the earnings for the accounting period within which the dividend, or dividends, in question were paid, ratably over the period, for the purpose of determining the amount of the earnings during the period up to the date of payment. This should be read in connection with instructions set forth in T. D. 2659. [¶834]. [Note the new law provision at ¶846.] (T. D. 2678, March 23, 1918.)

841 **Surtax Rates for 1913, 1914, and 1915.**—No super tax or surtax on net incomes of $20,000 or less.

Over $20,000 to $50,000	1%
Over $50,000 to $75,000	2%
Over $75,000 to $100,000	3%
Over $100,000 to $250,000	4%
Over $250,000 to $500,000	5%
Over $500,000	6%

842 **Surtax Rates for 1916 and 1917.**—

Amount subject to tax.	1916. *Per cent.*	1917. *Per cent.*
$5,000 to $7,500		1
$7,500 to $10,000		2
$10,000 to $12,500		3
$12,500 to $15,000		4
$15,000 to $20,000		5
$20,000 to $40,000	1	8
$40,000 to $60,000	2	12
$60,000 to $80,000	3	17
$80,000 to $100,000	4	22
$100,000 to $150,000	5	27
$150,000 to $200,000	6	31
$200,000 to $250,000	7	37
$250,000 to $300,000	8	42
$300,000 to $500,000	9	46
$500,000 to $750,000	10	50
$750,000 to $1,000,000	10	55
$1,000,000 to $1,500,000	11	61
$1,500,000 to $2,000,000	12	62
On excess of $2,000,000	13	63

843 **The Taxpayer is to Ascertain in What Year or Years Dividends are Deemed to Have Been Earned.**—Will it be the taxpayer's duty to advise himself what proportion of a [stock] dividend received by him is properly chargeable, * * * , to the corporate earnings or profits for each tax year? (Answer.) Yes. (Question 43½, 1918 Income Tax Primer.)

844 **Stock Dividends of Foreign Corporations Received in 1918 Are to be Apportioned to Prior Years.**—Supplementing office letter of February 13, 1918, and in further reference to your communication of February 6, 1918, requesting that you be advised whether dividends paid on stock of a foreign corporation should be shown on Form 1040, Revised, as apportioned to the year or years in which the earnings from which such dividends were distributed, accrue to the corporation, you are advised that it is held by this office that the provisions of Section 31 (b) added to the Act of September 8, 1916, by Section 1211 of the Act of October 3, 1917, apply equally to dividends paid by a foreign corporation. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated March 14, 1918.)

845 Law ¶41. **Dividends distributed during first sixty days of taxable year.**—"(e) Any distribution made during the first sixty days of any taxable year shall be deemed to have been made from earnings or profits accumulated during preceding taxable years;"

846 Law ¶ 42. "but any distribution made during the remainder of the taxable year shall be deemed to have been made from earnings or profits accumulated between the close of the preceding taxable year and the date of distribution, to the extent of such earnings or profits, and if the books of the corporation do not show the amount of such earnings or profits, the earnings or profits for the accounting period within which the distribution was made shall be deemed to have been accumulated ratably during such period." [Note the ruling, applicable to 1917, at ¶840.] [¶3094.]

847 **Uncompleted Contracts.**—If I enter into a contract in 1917 which will not be completed until 1918, and which requires me to make expenditures for material and labor, provide for possible losses, etc., must I include the advance payments I receive in 1917 in my return for that year? (Answer.) No. As you are unable to determine what amount of gain or profit you will derive from the contract until it is completed, the payments received thereon during 1917 need not be included in your return for that year. When the contract is completed the net gain or profit derived therefrom should be reported under Gross Income in your return rendered for the year 1918. (Question 22, 1918 Income Tax Primer.)

848 **Payments of Income Made in Liberty Loan Bonds.**—Various questions have arisen as to the taxable status of payments of income made in the form of Liberty Loan bonds and it was thought, in fairness to all concerned, that inquiries of this nature should be submitted by the Department to the Attorney General for his opinion. This has been done and, * * * the Attorney General holds, in part, that: [Read ¶775] (Part of letter to Kenefick, Cooke, Mitchell & Bass, Buffalo, signed by Deputy Commissioner L. F. Speer, and dated June 22, 1917.)

849 **Compensation Not Paid in Money.**—Where service is rendered for a stipulated price, wage, or salary and paid with something other than money, the stipulated value of service in terms of money is the value at which the thing taken in payment is to be considered for the purpose of the income tax.

850 Where there is no stipulation as to the value of service and payment for service is made with something other than money, the market or reasonable value of the thing taken in payment is the amount to be included as income for the purposes of the income tax. (Art. 4, ¶21–22, Reg. 33, Rev., Jan. 2, 1918.)

851 **Rent Not Paid in Money.**—Amounts expended by tenants for taxes and necessary repairs under agreement, in addition to a stipulated cash rental, are items of taxable income, and as such should be reported in the return of the landlord. A corresponding amount may be deducted by the landlord. (Art. 4, ¶57, Reg. 33, Rev., Jan. 2, 1918.)

852 Board, lodging or other consideration received in lieu of rental is considered income equal in amount to the indebtedness in payment of which it is received, and should be included in any return of annual net income its recipient is required to render under the provisions of the income-tax law. (T. D. 2135, Jan. 23, 1915.)

853 **Promissory Note Received in Payment of an Account is Equivalent to Cash Settlement.**—The receipt of a promissory note in settlement of an account is held to be, in effect, a payment of that account, and so much of the amount of such note as represents net income is subject to tax as of the tax year in which received. (Part of letter addressed to Carey, Piper and Hall, Baltimore, Maryland, signed by Deputy Commissioner L. F. Speer and dated March 1, 1915.)

854 **Interest on Bank Deposits.**—[Interest on bank deposits or on certificates of deposit] whether paid or accrued and unpaid, must be included in the annual income return of the person entitled to receive such interest, whether on open account or on the certificate of deposit. (Art. 67, Reg. 33, Jan. 5, 1914.)

855 Interest on bank accounts should be returned as income for the year in which credited. (Extract from letter to Beekman, Menken and Griscom, signed by Commissioner W. H. Osborn and dated February 18, 1915.)

856 **Amounts Credited Building and Loan Associations.**—Amount credited to shareholders of building and loan associations, when title to such credit passes to the shareholder at the time of the credit, has a taxable status for the normal and additional taxes for the year of the credit. Where the amount of such accumulations does not become available to the shareholder until the maturity of a share, the amount of a share in excess of the aggregate amount paid in by the shareholder is income to be accounted for as for the year of the maturity of the share for both the normal and additional tax. (Art. 4, ¶18, Reg. 33, Rev., Jan. 2, 1918.)

857 **Actual Receipt vs. Constructive Receipt of Income.**—Actual receipt is a reduction to possession. Constructive receipt is where income is credited to or made available to recipients and is to be reported as income; as credit to account of recipients of saving-bank interest, etc. (Art. 4, ¶51, Reg. 33, Rev., Jan. 2, 1918.)

858 **Commission Determined and Credited But Not Drawn.**—Reference is made to your letter of March 14, 1918, relating to an individual, paid on a commission basis, who during 1917 earned about $20,000 against which earnings but $4,000 has been withdrawn. You request to be advised whether the individual must account for the full amount of his income for the year 1917. ¶In reply you are advised that under the regulations it is held that income credited to or made available to the recipient is a constructive receipt and the amount is to be returned for income tax purposes for the year in which such income was credited or made available. Accordingly the salesman must include in his return the $20,000 commission earned by him during the year 1917. (Letter to Certified Audit Company of America, New York, N. Y., signed by Deputy Commissioner L. F. Speer, and dated April 30, 1918.)

859 **When Special Compensation (Bonus) is Considered Taxable Income.**—Special payments made by a corporation as extra compensation to certain of its employees may be deducted from gross income if it is clearly shown that such payments are made as compensation for services rendered and are paid in pursuance of a contract expressed or implied.

860 If such so-called "compensation" is a gratuity or voluntary payment, for which no service is rendered, the amounts so paid are not deductible. In cases wherein the payments are made as compensation for services rendered, the employee receiving the same, if he be a "taxable person," will be required to include the amount of such compensation in his personal income tax return—[Read discussion of subject at paragraph 1979.] (T. D. 2152, Feb. 12, 1915.)

861 **Salaries Paid by Exempt Organizations.**—Salaries paid by corporations, which corporations have been held to be exempt from the income tax under paragraph G of the income-tax law, are subject to the income tax and should be returned as income by the individual, * * * . (T. D. 2090, Dec. 14, 1914.)

862 **Living Quarters as Part of Salary.**—When an individual is furnished living quarters in addition to salary, the rental value of such living quarters is regarded as compensation subject to the income tax. (T. D. 2090, Dec. 14, 1914.)

863 **Quarters, Mileage, Expenses of Government Officers and Employees.**—Quarters: Commutation of quarters and the money equivalent of quarters furnished in kind shall be returned as income.

864 When quarters are furnished in kind, of a less number of rooms than the number allowed by law, the money equivalent only of the number of rooms actually assigned shall be returned as income. When quarters are furnished in kind, of a greater number of rooms than the number allowed by law, it is to be assumed that the excess number is assigned for the convenience of the Government, and the money equivalent only of the number of rooms allowed by law shall be returned as income.

865 Heat and light: Amounts received by, or paid for, an officer for heat and light shall be returned as income.

866 This includes the money equivalent, as fixed by the Government of heat and light furnished to an officer occupying public quarters.

867 Mileage: The difference between the amount received as mileage and the amount of actual necessary expenses incurred on a journey shall be returned as income.

868 Mileage, as such, is not gain, profit, or income to the officer, as he is required to pay his actual expenses while traveling under mileage orders. The gain, profit, or income is the difference between the amount received as mileage and the amount properly expended by the officer while traveling; and this difference, only, should be returned as income.

869 The actual expenses to be deducted by the individual before ascertaining his gain, profit, or income on account of mileage are the expenses for which reimbursement would be made by the Government if he had traveled on an actual expense basis instead of a mileage basis.

870 Reimbursement for actual expenses: Amounts paid by the Government in the nature of reimbursement for subsistence and other items of actual expenses incurred while absent on business for the Government are not required to be returned as income. (T. D. 2079, Nov. 24, 1914.)

871 Per diem allowance in lieu of subsistence while under traveling orders; the total allowance is income and there may be taken as a deduction for expense the amount actually expended from such allowance for actual necessary traveling expenses. (Art. 4, ¶55, Reg. 33, Rev., Jan. 2, 1918.)

872 Reference is made to Mim. 1078, dated August 27, 1914, requiring revenue agents and inspectors paid from the appropriations "Collecting the Income Tax" to modify their Forms 132 for August, 1914, and thereafter to report "headquarters" instead of "legal residence," the "headquarters" being the home—the actual domicile of the officer.

873 There has been so much confusion resulting, and so many officers have attempted to change their homes for the purpose of enabling them to receive per diem in lieu of subsistence, that it is found to be necessary to issue the following instructions as supplemental to the mimeograph above cited.

874 1. The Act of August 1, 1914, provides that heads of executive departments may prescribe within limits per diem in lieu of subsistence to persons traveling on duty away from their designated posts of duty when not otherwise fixed by law.

2. The Comptroller of the Treasury has ruled that headquarters may be estab-

875 lished as the designated posts of duty of the agents and inspectors whose per diem in lieu of subsistence is not fixed by law—that is, they will be considered as in a travel status when on duty away from their headquarters.

3. With the Comptroller's ruling in view, the headquarters of the officers referred
876 to have been fixed at their homes.

4. When a particular place has been reported by an agent or inspector as his
877 home when commissioned, he cannot thereafter report his home or headquarters elsewhere for the purpose of claiming per diem in lieu of subsistence, without first obtaining the permission of the Commissioner of Internal Revenue. This does not mean that a home may be established elsewhere than the place originally reported as headquarters and per diem in lieu of subsistence claimed when within the confines of the new or most recent home, as that would be a perversion of the law and the regulations made to carry the law into effect. In other words, when a particular place is reported as home, such place will continue as a home until *actual* domicile is taken up elsewhere, and when that is done or contemplated being done, the Commissioner should be fully advised of the change or proposed change, the reason therefor set forth in full and permission requested to report the new abode as "headquarters" on Form 132. If the Commissioner approves, a new commission will issue, and, if he does not approve, the agent or inspector, as the case may be, will not charge per diem in lieu of subsistence when he is at or within the confines of his home as at first reported or his actual home established thereafter, as under no circumstances can per diem in lieu of subsistence be paid when such agent or inspector is at or within the confines of his *actual* home. (T. D. 2124, Jan. 13, 1915.)

878 **Retired Pay.**—Retired pay of Army and naval officers and judges of the United States courts [read at ¶764] is subject to the income tax. (Art. 4, ¶58, Reg. 33, Rev., Jan. 2, 1918.)

879 **Bad Debts.**—Bad debts which have been claimed and allowed as a deduction in prior returns are considered income if subsequently collected. (Art. 4, ¶14, Reg. 33, Rev., Jan. 2, 1918.)

880 **Commissions Paid Salesmen.**—Are income to the salesmen as well as expense to the payer. (Art. 4, ¶19, Reg. 33, Rev., Jan. 2, 1918.)

881 **Percentage of Net Profits.**—For service paid for on a percentage of net profits is income to the employee, and to be accounted for as such. (Art. 4, ¶20, Reg. 33, Rev., Jan. 2, 1918.)

882 **Compensation Determined After Service is Rendered.**—In the case of compensation for service rendered, where no determination of compensation is had until the completion of the service, the amount received in consideration of the service is income to be accounted for as for the calendar year of its receipt.

Where the service and payment period is divided by the end of the taxable year,
883 the compensation for the period so divided at the end of the year will be accounted for as income for the year in which payment is actually received. Where the service is compensated by fee, or is of such nature that no part of the fee or compensation becomes due until the completion of the service, the entire amount received should be income to be accounted for as for the year of receipt.

A person having a salary by the year and in addition commissions on sales, the
884 salary to be paid at the time commissions are determined, and the determination of commissions is in the succeeding calendar year, the entire amount of salary and commissions should be accounted for as income of the calendar year of receipt. (Art. 4, ¶52–54, Reg. 33, Rev., Jan. 2, 1918.)

885 **Compensation for Services as Trustees.**—If no determination was made of the amount due the trustee of an estate as compensation for his services over a period of years until the trust was terminated, the amount allowed him should be returned in full, subject to allowable deductions, as income for the year in which paid; and should not be prorated over the length of time during which he served as trustee. (T. D. 2135, Jan. 23, 1915.)

886 **Voluntary Offerings Received by Clergyman.**—Easter offerings, and fees received by clergymen for funerals, masses, marriages, baptisms, etc., are considered income subject to tax under the provisions of the income-tax law of October 3, 1913. Christmas gifts, however, are not considered income within the meaning of the law and should not be included in a return. (T. D. 2090, Dec. 14, 1914.)

887 **Renewal Premium.**—Commissions on renewal premium for insurance received by agents on account of business written is income to be accounted for as such and for the calendar year of its receipt. (Art. 4, ¶56, Reg. 33, Rev., Jan. 2, 1918.)

888 A commission retained by a life insurance agent on his own life insurance policy is held to be income accruing to the agent, and should be included in his return of income for the assessment of the income tax. (T. D. 2137, Jan. 30, 1915.)

889 **Royalty.**—Royalty paid to a proprietor by those who are allowed to develop or use property, or operate under some right belonging to him, is to be accounted for as income. (Art. 4, ¶59, Reg. 33, Rev., Jan. 2, 1918.)

890 **Farms and Farmers.**—The term "farm" as herein used embraces the farm in the ordinarily accepted sense and includes plantations, ranches, stock farms, dairy farms, poultry farms, fruit farms, truck farms, and all land used for similar purposes: and for the purpose of this decision all corporations, partnerships, or individuals who cultivate, operate, or manage such farms for gain or profit, either as owners or tenants, are designated as "farmers."

891 All gains, profits and income derived from the sale or exchange of farm products, whether produced on the farm or purchased and resold by the farmer, shall be included in the return of income for the year in which the products were actually marketed and sold.

892 All items of expense connected with the planting, cultivating, harvesting and marketing of a crop, or the care, feeding and marketing of live stock may be claimed as deductions only in the return rendered for the year during which such expenditures were made. This ruling applies even though the crops or stock in connection with which the expenses were incurred may not have been sold or exchanged for money or a money equivalent during the year for which the return is rendered.

893 That portion of Treasury Decision 2153 and paragraph 32 of Regulations No. 33 (Revised) which provides "cost of stock purchased for resale is an allowable deduction under the item of expense," is hereby annulled. It is held that the amount expended in purchasing stock for resale is an investment of capital and is not to be taken as an item of expense for the year in which the stock was purchased, or for any subsequent year; but when the stock so purchased is sold its cost is to be deducted from the sales price in ascertaining the amount of gain or profit returnable for tax purposes.

894 Where the cost of stock or farm products purchased in 1916, or any previous year, for sale, or the expense of producing stock or products on the farm, has been claimed as a deduction or taken into consideration in ascertaining the farmer's liability to income tax for some year prior to 1917, and the stock or farm products so purchased or produced were sold during the latter year, the entire proceeds of the sale are to be returned as income for the year in which the sale was made, for the reason that the farmer, having once received the benefit of the deduction, is not again entitled to it. If, however, such cost or expense had not been claimed as a deduction, or had not been taken into consideration in ascertaining the farmer's liability to income tax for a previous year, the amount of such cost or expense may be deducted from the selling price of the stock or farm products and the difference only returned as income.

895 Farmers who keep books according to some approved method of accounting which clearly show the net income, and take annual inventories, may, if the same method is consistently followed from year to year, prepare their returns in accordance with the showing made by the books and inventories. If the inventory method is adopted the farmer should, in order to ascertain gross income, add to the amount received from sales made during the year, the inventory of the live stock and products on hand at the close of the year, and from this sum deduct the amount expended in purchasing live stock and products plus the inventory of the live stock and products at the beginning of the year.

896 The inventory at the beginning of a tax year must be the same figure as at the close of the next preceding year and must include the cost price of live stock or products purchased for resale, and may include the live stock and products produced on the farm and still on hand. Where gross income is ascertained by inventories, no deduction can be made for live stock or products lost during the year, whether purchased for resale or produced on the farm, as such losses will be reflected in the inventory by reducing the amount of live stock or products on hand at the close of the year.

897 Live stock purchased for draft, breeding or dairy purposes, or for any purpose other than resale, may be included in the inventory for each year at a figure which will reflect the reduction in value estimated to have occurred during the year through increase of age or other causes. Such a reduction in value should be based on the cost and estimated life of the live stock. In the case of the loss of such live stock no deduction can be made, as the loss will be reflected in the inventory at the end of the year. Where the inventory method is used, the cost price of the article sold must not be taken as an additional deduction in the return of income as it is reflected in the inventory.

898 In view of the foregoing, all corporations, partnerships, and individuals engaged in the live stock or farming business, which do not keep books of account and ascertain their gross income by inventory, should prepare their returns of annual net

income on the basis of actual receipts and disbursements in order that their returns o income may be susceptible of audit for purposes of verification. Treasury Decision 2433 [¶1928] contains additional information relative to the rendering of returns of income by corporations keeping books in accordance with standard systems of accounting, or in conformity with the requirements of some Federal, State or municipal authority, having supervision over such corporations.

899 The foregoing relates only to income derived from the operation of a farm and has no relation to the gain or profit which may result from the sale of the farm.

900 Where a farmer exchanges farm produce for merchandise, groceries, or mill products, the market value of the article or product received in exchange is to be returned as income.

901 A farmer is not required to include in his income tax return the value of farm produce consumed by himself and family. (T. D. 2665, Mar. 8, 1918, as amended by SBC—Mim.—1836, Mar. 18, 1918.)

902 The term "farm" as herein used embraces the farm in the ordinarily accepted sense, plantations, ranches, stock farms, dairy farms, poultry farms, fruit farms, truck farms, and all lands used for similar purposes; and for the purposes of this decision all persons who cultivate, operate, or manage farms for gain or profit, either as owners or tenants, are designated as "farmers."

903 All gains, profits, and income derived from the sale or exchange of farm products, whether produced on the farm or purchased and resold by a farmer, shall be included in the return of income for the year in which the products were actually marketed and sold; and all allowable deductions, including the legitimate expenses incident to the production of that year or future years, may be claimed in the return of income for the tax year in which the right to such deductions shall arise, although the products to which such expenses and deductions are incidental may not have been sold or exchanged for money, or a money equivalent during the year for which the return is rendered.

904 Rents received in crop shares shall likewise be returned as of the year in which the the crop shares are reduced to money or a money equivalent, and allowable deductions likewise shall be claimed in the return of income for the tax year to which they apply, although expenses and deductions may be incident to products which remained unsold at the end of the year for which the deductions are claimed. When farm products are held for favorable market prices, no deduction on account of shrinkage in weight or physical value or losses by reason of such shrinkage or deterioration in storage shall be allowed. (Art. 4, ¶29–31, Reg. 33, Rev., Jan. 2, 1918.)

905 Where stock has been purchased for any purpose and afterwards dies from disease or injury or is killed by order of the authorities of a State or the United States and the cost thereof has not been claimed as an item of expense, the actual purchase price of such stock, less any depreciation which may have been previously claimed, may be deducted as a loss. Property destroyed by order of the authorities of a State or of the United States may in like manner be claimed as a loss; but if reimbursement is made by a State or the United States, in whole or in part, on account of stock killed or property destroyed, the amount received shall be reported as income for the year in which reimbursement is made. [Read ¶916.]

906 The cost of farm machinery is not an allowable deduction as an item of expense, but the cost of ordinary tools may be included under this item. [Read ¶917.]

907 Under paragraph 7 of section 5 (a), act of 1916, providing for "a reasonable allowance for the exhaustion, wear, and tear of property arising out of its use or employment * * * ," there may be claimed a reasonable allowance for depreciation on farm buildings (other than a dwelling occupied by the owner), farm machinery, and other physical property, including stock purchased for breeding purposes, but no claim for depreciation on stock raised or purchased for resale will be allowed.

908 A person cultivating or operating a farm for recreation or pleasure, on a basis other than the recognized principles of commercial farming, the result of which is a continual loss from year to year, is not regarded as a farmer. In such cases if the expenses incurred in connection with the farm are in excess of the receipts therefrom, the entire receipts from sale of products may be ignored in rendering a return of income, and the expenses incurred being regarded as personal expenses, will not constitute allowable deductions in the return of income derived from other sources.

909 An individual engaged in raising and selling stock (cattle, sheep, horses, etc.), is not entitled to claim as a loss the value of such animals raised as die. The cost of raising will have been taken as an expense deduction. In the case of animals purchased, which die, the amount of purchase money will be an allowable deduction, if not previously deducted as a business expense. (Art. 4, ¶33–37, Reg. 33, Rev., Jan. 2, 1918.)

910 A corporation engaged in raising and selling sheep, cattle, or other live stock can not deduct from gross income any amounts claimed as a loss on account of the death of such live stock through exposure or otherwise, unless and to the extent that such stock

was specifically paid for in cash or its equivalent. If the stock is raised and fed upon the farm or range, the cost of feeding and raising the stock will be included as operating expenses of the corporation, and no loss of capital is sustained when the live stock perishes. If, however, the live stock was purchased and the cost thereof was not charged into expenses and as such deducted from gross income, the deductible loss will be the actual purchase price of the stock which perished, less any depreciation which had been previously charged off and deducted with respect to such purchased live stock. (Art. 154, ¶472, Reg. 33, Rev., Jan. 2, 1918.)

911 In case of sale the total amount received for stock raised and for stock purchased for resale [modified by T. D. 2665, ¶890] is to be accounted for as income. (Art. 4, ¶38, Reg. 33, Rev., Jan. 2, 1918.)

912 **Orchards and Ranches.**—Amounts expended in the development of orchards and ranches prior to the time when the productive stage is reached constitute investments of capital. (Art. 4, ¶39, Reg. 33, Rev., Jan. 2, 1918.)

913 **Farming Corporations Specifically** [Read also at ¶890.].—Corporations engaged in operating plantations, ranches, stock farms, poultry farms, and lands used for raising fruit, truck, etc., including orchards of all kinds, shall make their returns on the basis of the products actually marketed and sold during the year, whether such products were produced or purchased and resold.

914 All deductions shall be based upon the legitimate expense incident to the current year whether for the production of the present or future years, except that in a case wherein a corporation is engaged in producing crops which take more than a year from the time of planting, to the process of gathering and disposal, the income reported and expenses deducted should be determined upon the crop basis.

915 Cost of live stock purchased for resale is [not] an allowable deduction under the item of expense, but money expended for stock for breeding [or for any other] purposes is regarded as capital invested, and amounts so expended do not constitute allowable deductions except as hereinafter stated. [For explanation of the parts in brackets read at ¶893.]

916 Where stock has been purchased for any purpose and afterwards dies from disease or injury or is killed by order of the authorities of a State or the United States, and the cost thereof has not been claimed as an item of expense in the preparation of previous returns, the actual purchase price of such stock, less any depreciation which may have been previously claimed, less also any insurance or indemnity recovered, may be deducted as a loss. The actual cost of property destroyed by order of the authorities of a State or of the United States, may, in like manner, be claimed as a loss; but if reimbursement is made by a State or the United States, in whole or in part, on account of stock killed or property destroyed, the amount received shall be reported as income for the year in which reimbursement is made. In determining the cost of stock for the purpose of ascertaining the deductible loss there shall be taken into account only the purchase price, and not the cost of any feed, pasturage, or care, which has been deducted as an expense of operations. [Read ¶905.]

917 The cost of farm machinery represents a capital investment and, as such, is not an allowable deduction as an item of expense, but the cost of ordinary tools, of short life or insignificant cost, such as hand tools, including shovels, rakes, etc., may be included under this item. [Read ¶906.]

918 There may be claimed a reasonable allowance for depreciation on farm buildings, farm machinery, and other physical property, including stock purchased for breeding purposes, but no claim for depreciation on stock raised or purchased for resale will be allowed. (Art. 123, ¶404–409, Reg. 33, Rev., Jan. 2, 1918.)

919 **Actual Receipt vs. Constructive Receipt.**—[In reading the following the ruling in ¶857 should be borne in mind, and also, that taxpayers are, under certain conditions, permitted to make returns of income on an accrued basis, ¶768.]

920 **Rent is Returnable as Income in Year Received.**—[Read ¶768.] This office is in receipt of your letter of February 18, 1915, and in reply thereto you are advised that the amount of rental received from a piece of real property should be included in any personal annual return of net income the landlord may be required to render for the year in which received, and deduction may be claimed on account of any expense incurred in the maintenance of the said property, or its use, for rental purposes, including amounts paid for repairs, insurance, fuel, light and water, and janitor and elevator service, if any, and in addition thereto an amount representing a reasonable allowance for the wear and tear of the property arising from its use for rental purposes may be claimed as a deduction, but no claim for depreciation should be made on account of any amount of expense of restoring property or making good the exhaustion thereof for which a deduction is claimed elsewhere in the return. (Letter to The Corporation Trust Company signed by Acting Commissioner David A. Gates, and dated February 26, 1915.)

921 "A tenant pays his rent for the months of November and December, 1914, on January 5, 1915. In making up the return for the landlord for the year 1914 should he include the rent received on January 5, 1915, for the months of November and December or should it be included in his return for the year 1915? * * * ."

922 "In reply you are advised that the landlord should include in his return of annual net income the rents actually paid to him within the year; * * * The rent paid on January 5, 1915, for the months of November and December, 1914, belongs to the year 1915 for * * * the purposes of return by the landlord * * * " (Extract from letter to Wm. S. Lare, signed by Deputy Commissioner L. F. Speer, and dated February 9, 1915.)

923 **Dividends and Interest are Returnable as Income in Year Received.**—[Read ¶768]. This office holds that dividends on stock of corporations and interest on notes, ordinary mortgages, and corporate obligations, should be entered on the annual return for the year in which such payments were received. (Part of letter to Beekman, Menken and Griscom, New York, N. Y., signed by Commissioner W. H. Osborn, and dated February 18, 1915.)

924 **Accounts Receivable are Income for the Year in which Created.**—This office holds that the net income of the individual in the mercantile business should be ascertained from his books and the actual inventory of his merchandise, which is in accordance with established procedure in all mercantile businesses. [Extract from letter to Beekman, Menken and Griscom, signed by Deputy Commissioner L. F. Speer and dated March 31, 1915.)

925 **Accrued Interest on Bonds Purchased Between Interest Dates.**—Interest accrued to the time of purchase (advanced by purchaser) is not to be accounted for as income by the purchaser. Only the amount of interest assignable to the portion of the interest period subsequent to the purchase has a status of income for the purposes of return and tax by purchaser.

926 The amount of accrued interest so advanced by the purchaser is taxable income to be accounted for in the return of the vendor. (Art. 4, ¶15-16, Reg. 33, Rev., Jan. 2, 1918.)

927 **Interest Coupons Exchanged for New Bonds.**—Coupons from bonds for interest thereon, exchanged for other bonds are held to be the equivalent of payment of the interest coupons and purchase of the new bonds with the cash. The amount of the coupons to be accounted for as income for the calendar year in which the exchange is made. (Art. 4, ¶17, Reg. 33 Rev. Jan. 2, 1918.)

928 **Scrip Payment of Interest.**—The foregoing [see ¶788] holds true for scrip payment of interest [i. e., the scrip is gross income.] (Art. 4, ¶43 Reg. 33, Rev., Jan. 2, 1918.)

929 **Private Bank Owned by an Individual or by a Partnership.**—When it can be clearly shown that a private bank is owned by one man, it is evident that such bank is not an association within the meaning of the Federal income tax law, and that therefore such bank will not be required to make a return such as corporations and associations are required to make, but the individual owner, * * * will be required to make a return on Form 1040, showing in such return the income which he receives not only from the bank but from all other sources. (T. D. 2137, Jan. 30, 1915.)

930 Private banks which do not have this formal organization [paragraph 1732], but which transact business, not in the name of the bank, but in the name of the individuals who compose the firm, as John Smith & Co., are held to be co-partnerships and, as such, are not required to [pay tax]. In such cases the individuals who compose the firm, if they have net incomes in excess of [$1,000 or $2,000] will be required to make individual returns of Form 1040, accounting for therein their respective incomes arising and accruing from the earnings of the bank. (Mimeograph letter No. 1271 to Collectors, Oct. 19, 1915.)

931 **Property Acquired by Gift.**—The value of property acquired by gift is not subject to income tax, but all gains, profits, or income derived therefrom are subject to tax [see ¶961] and if the property so acquired is subsequently sold at a price greater than the appraised value at the time the property was acquired by gift, the gain in value is held to be income and subject to tax under the provisions of the Federal income tax law. (T. D. 2090, Dec. 14, 1914.)

932 **Legacies.**—The general policy of the law and rule of interpretation require that legacies in all cases, unless clearly inconsistent with the intention of the testator, should be held to be vested rather than contingent. Where there is a vested interest

the income from such interest, whether distributed or not, is subject to the tax; and when in the hands of fiduciaries they are required to account for and pay the tax thereon. (T. D. 2090, Dec. 14, 1914.)

933 **Sale of Stock Received as a Bonus.**—Where common stock is received as a bonus in consideration of the purchase of preferred stock, the entire proceeds derived from the sale or transfer of such stock is income subject to the normal and additional tax. (Art. 4, ¶40, Reg. 33, Rev., Jan. 2, 1918.)

934 **Sale of Stock Acquired by Gift.**—The fair market price or value of stock acquired by gift subsequent to March 1, 1913, is the basis for computing gain derived or loss sustained by the sale thereof. If acquired by gift prior to March 1, 1913, the fair market price or value as of that date is the basis for computation. (Art. 4, ¶41, Reg. 33, Rev., Jan. 2, 1918.)

935 **Sale of Property Acquired by Inheritance.**—The appraised value at the time of the death of a testator is the basis for determining gain or profit upon sale subsequent to the death after March 1, 1913. (Art. 4, ¶44, Reg. 33, Rev., Jan. 2, 1918.)

936 **Interest on Bonds Received by Legatee.**—A legatee is required to return as income the full amount of interest received by him on a bond, notwithstanding the fact that a part of the first coupon, payable after he had received it, had been added to the bond and included in the gross estate of the decedent, thereby becoming subject to the estate-tax law. (T. D. 2570, Nov. 6, 1917.)

937 **Income Received by Beneficiaries Through Fiduciaries.**—A beneficiary is liable for the normal tax upon the amount of net income derived by him from a taxable source through a fiduciary less * * * the amount of income on which the normal tax has been withheld at source, and is also liable for the additional tax assessable on the amount of net income received by him in excess of [$5,000]; and in order to determine whether the net income of a beneficiary is or is not in excess of [$5,000] and subject to the additional tax, the amount derived by him from an estate and all other taxable sources in required to be shown on his personal annual return. (T. D. 2090, Dec. 14, 1914.)

938 **Income Accruing to Minor through Natural Guardian.**—The parent is held to be the natural guardian of a minor child. Income received by the minor child from sources other than the parent should be included by the parent in his return of income. The fact that such income is not appropriated by the parent is immaterial, as it will be held, in the absence of a showing of fact to the contrary, that such income was subject to appropriation and was appropriated by the parent, and that the child receives the same as a gift from the parent. Where the income is from a separate estate and the parent has been appointed guardian and the conditions are such that the income so received is to be held for the use of the child, it shall not be included in the return of income of the parent, but shall be accounted for otherwise for the purposes of the income tax in manner and form as called for by the facts of the particular case. (Art. 29, ¶201, Reg. 33, Rev., Jan. 2, 1918.)

939 **Pensions.**—Pensions paid by the United States, private institutions, or individuals are to be accounted for, for income tax purposes, in all cases where income of the pensioner is liable for income tax. (Art. 4, ¶49, Reg. 33, Rev., Jan. 2, 1918.)

940 **Distributable Amounts Received by Fiduciary to be Returned by Beneficiary Whether Distributed or Not.**— The beneficiary will be required in the case of trust estates to account for the actual amounts distributed or credited to him. (Art. 29, ¶210, Reg. 33, Rev., Jan. 2, 1918.)

941 In answer to your letter of the 1st inst., there was sent to you a telegram reading as follows: "Beneficiary should report his share of the distributable income received by fiduciary during year. Fiduciary should inform beneficiary of his share of distributable income received by fiduciary also of his share of dividends received by fiduciary included therein." (Letter to F. W. Denio, Old Colony Trust Co., Boston, Mass.; signed by Commissioner Daniel C. Roper, and dated Mar. 5, 1918.)

942 Dividends in the hands of a fiduciary and belonging to a beneficiary are not subject to the normal tax, but will be subject to the additional tax to the beneficiary whenever the beneficiary's income from all taxable sources is in excess of [$5,000]. (T. D. 2090, Dec. 14, 1914.)

943 Unless the beneficiary is under some disability which requires the fiduciary to act, the beneficiary will make his own return and account for the tax upon his entire net income. (T. D. 2090, Dec. 14, 1914.)

Other Gross Income.—[Read under "Corporations," at ¶1789.]

944 Law ¶94. **Gross Income Exempt From Law.**—"(b) [Gross income] Does not include the following items, which shall be exempt from taxation under this title:"

[Read at ¶2863.]

945 Law ¶95. **Proceeds of Life Insurance Policies on Death of Insured are Exempt.**—"(1) [Gross income does not include] The proceeds of life insurance policies paid upon the death of the insured to individual beneficiaries or to the estate of the insured;"

946 Law ¶96. **Returns to Insured of Premiums Paid Under Life Insurance, Endowment, or Annuity Contracts Are Exempt.**—"(2) [Gross income does not include] The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract;"

[Read at ¶28g4.]

947 The amount paid under a life insurance, endowment, or annuity contract is not income when returned to the person making the contract, either upon the maturity or surrender of the contract; but the amount by which the sum received exceeds the sum paid and coming into the hands of the person making the contract and payment is income. (T. D. 2090 as amended by T. D. 2152, Feb. 12, 1915.)

948 Where insured receives, under any form of life insurance, an amount in excess of premiums paid for the insurance, such excess has a taxable status and is to be accounted for as for the calendar year of its receipt. (Art. 4, ¶45, Reg. 33, Rev., Jan. 2, 1918.)

949 There are two matters relating to Income Tax on Individuals regarding which I am unable to find any mention in the Law itself or in the Treasury Decisions, and would be glad to have you inform me about them at this time.

First. * * * .

950 Second. Cancelled Life Insurance:

An Endowment Policy and a Straight Life Policy are surrendered by the Policyholder to the Insurance Company and cancelled, not at maturity but at an arbitrary date, and the "cash surrender value" is paid by the company to the policyholder. This amount exceeds the total of premiums theretofore paid on the respective policies.

Is any portion of this difference regarded as Taxable Income? If so, what pro-

951 portion, seeing that the payment of premiums and consequent earning thereon by the Company began several years before the inception of the Income Tax Law? (Answer). You are further advised that the difference between the amount received by an insurance policyholder upon the maturity or surrender of the policy and the aggregate amount of premiums paid during the lifetime of the policy, constitutes taxable income which should be included in any personal return the individual may be required to render for the year during which the proceeds of the policy are received. (Part of letter of inquiry to the Commissioner of Internal Revenue, from W. W. Bacon, Philadelphia, dated Jan. 19, 1917, and the answer thereto, signed by Deputy Commissioner L. F. Speer, and dated Feb. 8, 1917.)

Dividends paid on life insurance policies that have not matured, whether such

952 dividends are drawn in cash by the insured or applied to the reduction of the annual premium due, are not considered items of taxable income under the law, and should be excluded from a return of income. (T. D. 2137, Jan. 30, 1915.)

953 Dividends on paid-up policies are in the nature of corporate dividends and are to be accounted for as income for the purposes of the additional tax only. (Art. 4, ¶46, Reg. 33, Rev., Jan. 2, 1918.)

954 Dear Sir: It has been my judgment that annuities sold by the National Life Insurance Company and other insurance companies were not subject to tax under the Income Tax Law, but I realize that the statute is not entirely free from doubt, so far as relates to such portion of annuity payments as may be treated as income, though such portions are comparatively small and the determination of their amount is difficult and almost impracticable. I would like to know, however, whether the Department has made any ruling relative to the taxation of annuities and if any ruling has been made, would be glad to receive a copy of it. (Letter to Commissioner W. H. Osborn, signed by Fred. A. Howland, Counsel, National Life Insurance Company and dated Feb. 5, 1914.) (Answer). Sir: In reply to your letter of Feb. 5, relative to the taxation of annuities under the Income Tax Law, you are informed that life insurance annuities shall not be included as income. (Signed by Deputy Commissioner L. F. Speer, and dated Feb. 17, 1914.)

955 Dear Sir: I should have made earlier acknowledgment of your telegram of December 27th reading as follows:

"As at present advised, this office holds that proceeds of life insurance policies paid pursuant to terms of contract, whether upon maturity of policy, death of insured or as annuities are not subject to tax in hands of beneficiaries * * * . Payment of deferred dividends in so far as they represent portions of actual premiums received are proceeds of insurance policy within the meaning of law."

I thank you very much for advising of the ruling on the subjects mentioned and in
956 communicating with the counsel of other insurance companies I find that it cleared up in their minds some important points. There is, however, one further question which I raised in my letter of November 17th and possibly your telegram of the 27th covers it. The question is one of considerable importance and one which we are called upon to deal with at once. I am taking the liberty of bringing the matter to your attention at this time and state a concrete case with which wemust deal very shortly. On February 1, 1914, this company will be called upon to pay an annuity instalment of $3,448.46 under annuity contract No.———. This annuity contract was purchased for cash February 1, 1903, the consideration being $40,985. Annually on February 1st, under the terms of the annuity contract, the sum of $3,448.46 is payable to the annuitant.

The query is: Is this instalment of $3,448,46 which the company must pay to
957 the annuitant on February 1, 1914, and future annual instalments, subject to the income tax? It is my opinion, as I expressed it in my letter to you of November 17th, that the proper construction of the income tax law of 1913 imposes no tax in such a case.

I would thank you very much indeed if you would give me a ruling in the matter.
958 As the company is constantly having to answer inquiries of annuitants in such cases, I would appreciate very much if you would send me a wire on the subject at my expense. (Letter to Commissioner W. H. Osborn, signed by Frederick L. Allen, *General Solicitor*, Mutual Life Insurance Company and dated Jan. 8, 1914.) (Answer.) So much of annuities paid to annuitant as represents payment made by him on annuity contract and paid back to him shall not be included in income of annuitant. Any increment on purchase price of annuity is taxable income. * * * (Signed by Commissioner W. H. Osborn, and dated Jan. 12, 1914.)

959 Sir: In reply to your letter of January 28th, in which you request to be advised whether income received from or credited to policholders of life insurance, as dividends, shall be included as income, you are informed that dividends paid on life insurance policies that have not matured, whether such dividends are paid by the company in cash or added to the face value of the policy, are not considered items of taxable income under the law, and should be excluded in making the annual return.

Dividends from paid-up policies are considered income to the recipient, and must be
960 included in the annual return. (Letter to Robert Lynn Cox, General Counsel and Manager, Association of Life Insurance Presidents, signed by Deputy Commissioner L. C. Speer, and dated Mar. 5. 1914.)

961 Law ¶97. **Value of Property Acquired by Gift, Bequest, etc., is Exempt.**—"(3) [Gross income does not include] The value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included in gross income);"

962 Where the monthly salary of an officer or employee is paid for a limited period after his death to his widow in recognition of the services rendered by her husband, no services being rendered by the widow, it is held that such payment is a gratuity and exempt from taxation under the income tax law. Such a payment would not, however, be an allowable deduction as an expense of carrying on business in the return of the person, firm, or corporation paying same. (T. D. 2090, Dec. 14, 1914.)

963 Law ¶98. **Interest on United States Bonds, etc., Except as Otherwise Provided in the Act of Authorization, and on Bonds of State or Political Subdivision Thereof is Exempt.**—"(4) [Gross income does not include] Interest upon (a) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia or"

964 Law ¶99. "(b) securities issued under the provisions of the Federal Farm Loan Act of July 17, 1916; or"

965 Law ¶100. "(c) the obligations of the United States or its possessions [Read ¶975 below]; or"

966 Law ¶101. "(d) bonds issued by the War Finance Corporation [Read ¶975 below]:"

967 Law ¶102. "*Provided*, That every person owning any of the obligations, securities or bonds enumerated in clauses (a), (b), (c) and (d) shall, in the return required

by this title, submit a statement showing the number and amount of such obligations, securities and bonds owned by him and the income received therefrom, in such form and with such information as the Commissioner may require."

[Read beginning at ¶2865.]

968 **Obligations of a State, Political Subdivisions, etc.**—Among income exempt from the income tax is interest upon the obligations of a State or any political subdivision thereof. Obligations issued for a public purpose by or on behalf of the State or a duly organized political subdivision acting by constituted authorities duly empowered to issue such obligations are the obligations of a State or a political subdivision thereof. (Art. 83, ¶341, Reg. 33, Rev., Jan. 2, 1918, as amended by T. D. 2715, May 20, 1918.)

969 Where a municipality purchases a public utility subject to a mortgage the mortgage retains its original character, even though the municipality assumes the mortgage indebtedness and pays the interest thereon. Therefore, the indebtedness secured by such mortgage is not an obligation of the municipality within the meaning of Paragraph B of the income tax law. (T. D. 2090, Dec. 14, 1914.)

970 **Political Subdivisions.**—The term "political subdivision" denotes any division of the State made by proper authorities thereof acting within their constitutional powers for the purpose of carrying out a portion of those functions of the State which by long usage and the inherent necessities of government have always been regarded as public. Political subdivisions of a State, within the meaning of the exemption referred to in Article 83, include special assessment districts so created, such as road, water, sewer gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement and similar districts and divisions of a State." (Art. 84, ¶342, Reg. 33, Rev., Jan. 2, 1918, as amended by T. D. 2715, May 20, 1918.)

971 Referring to paragraph B, section 2 of the Income Tax Law, which reads as follows:

"That in computing net income there shall be excluded interest upon the obligations of a State or any political subdivision thereof,"

you are informed that under date of January 30, 1914, The Honorable, The Attorney General, held that special assessment districts created under the laws of the several States for public purposes, such as the improvement of streets and public highways, the provision for sewerage, gas and light, and the reclamation, drainage or irrigation of bodies of land within such special assessment districts when such districts are for *public* use are political subdivisions of the State within the meaning of the above proviso.

972 It is held that the term "political subdivision" includes special assessment districts or divisions of a State created by the proper authority of the State acting within its constitutional powers and under its general laws, for the purpose of carrying out a portion of those functions of the State which by long usage and inherent necessitates of government have always been regarded as public.

973 Levee and school districts, when lawfully created under the authority of the State and which are authorized by the laws of the State to levy a tax to meet the obligations of such districts, are also held to be political subdivisions of a State within the meaning of the Income Tax law.

974 The income derived from interest upon the obligations of all such public districts shall, therefore, be excluded in computing net income for the income tax. (T. D. 1946, Feb. 10, 1914.)

975 Law ¶103. **Taxable Status of Interest on Obligations of the United States Issued After September 1, 1917.**—"In the case of obligations of the United States issued after September 1, 1917, and in the case of bonds issued by the War Finance Corporation, the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt from taxation to the taxpayer both under his title and under Title III;"

[Read beginning at ¶2868.]

976 **Perpetual Exemption Provision Applicable to Second, Third, and Fourth Liberty Loan Bond Interest.**—Attention is called to Section 7 of the Act of Congress approved September 24, 1917, "Second Liberty Loan Act" providing for the issue of 4% Liberty Bonds, Treasury Certificates of Indebtedness and War Savings Certificates, which reads as follows:

"That none of the bonds authorized by section one, nor of the certificates authorized by action five, or by section six, of this Act, shall bear the circulation privilege. All such bonds and certificates shall be exempt, both as to principal and interest from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess profits and war-profits taxes, now or hereafter imposed by the United States, upon the

income or profits of individuals, partnerships, associations, or corporations. The interest on an amount of such bonds and certificates the principal of which does not exceed in the aggregate $5,000, owned by any individual, partnership, association or corporation, shall be exempt from the taxes provided for in subdivision (b) of this section."

977 You are hereby informed that holders (whether individual, partnerships, associations or corporations) of Liberty Bonds, Treasury Certificates of Indebtedness and War Savings Certificates authorized by the Act of September 24, 1917, are entitled to exemption from all income and war excess profits taxes upon the interest received on a principal amount not to exceed $5,000 face value of such obligations. If, for example, the holder owns $5,000 Treasury Certificates of Indebtedness, $7,000 4% Liberty Bonds, and $1,000 War Savings Certificates, he will be entitled to exemption from graduated additional income taxes and war excess profits taxes upon only the interest received upon $5,000 of the aforesaid obligations. It is immaterial whether the 4% Liberty Bonds were issued to the holder in exchange for Liberty Bonds of the first series or Treasury Certificates of Indebtedness, or whether issued upon a new subscription. The exemption is upon the income from $5,000 face value of the obligations issued by authority of the aforesaid Act of September 24, 1917. (T. D. 2585, Nov. 8, 1917.)

978 Section 1200 of the Act of October 3, 1917, so amends section 4 of the Act of September 8, 1916, as to exempt from the tax, interest on the obligations of the United States issued after September 1, 1917, only if and to the extent provided in the act of authorizing their issue.

979 Said act provides that bonds and certificates issued thereunder shall be exempt from all taxes except estate or inheritance taxes, additional income taxes, commonly known as surtaxes, and excess or war profits taxes. (Art. 85, ¶343–344, Reg. 33, Rev., Jan. 2, 1918.)

980 **Application of Exemption when Several Members of Family Invest in Liberty Bonds.**—(*Question.*) Please answer by wire at once if possible our telegram, October second, as follows: "If husband, wife and minor children each hold new Liberty fours and make joint income tax return will each member of such family be tax exempt as to $5,000 bonds each. Wire answer to-day if possible." Information very important in campaign selling Liberty Bonds. (*Answer.*) Husband and wife each owning in own right Liberty Loan Bonds and certificates not exceeding five thousand dollars each entitle to exemption provided by Section Seven B, Loan Act. Minor children having separate estates each entitled to same exemption. (Telegram to Commissioner of Internal Revenue from Lee, Higginson & Co., Boston, Mass., and the reply thereto, signed by Acting Secretary of the Treasury, O. T. Crosby, and dated October 8, 1917.)

981 **Special Temporary Exemption Provisions Applicable to Second, Third, and Fourth Liberty Loan Bond Interest.**—Questions have arisen with regard to the exemption of interest on bonds held or subscribed for by trustees, partnerships or corporations under Section 1 of the supplement to Second Liberty Bond Act, approved September 24, 1918. This Section is as follows:

"That until the expiration of two years after the date of the termination of the war between the United States and the Imperial German Government, as fixed by proclamation of the President—

"(1) The interest on an amount of Bonds of the Fourth Liberty Loan the principal of which does not exceed $30,000, owned by any individual, partnership, association, or corporation, shall be exempt from graduated additional income taxes, commonly known as surtaxes, and excess profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations;

"(2) The interest received after January 1, 1918, on an amount of Bonds of the First Liberty Loan Converted, dated either November 15, 1917, or May 9, 1918, the Second Liberty Loan, Converted, and Unconverted, and the Third Liberty Loan, the principal of which does not exceed $45,000 in the aggregate, owned by any individual, partnership, association, or corporation, shall be exempt from such taxes; *Provided, however,* That no owner of such Bonds shall be entitled to such exemption in respect to the interest on an aggregate principal amount of such Bonds exceeding one and one-half times the principal amount of Bonds of the Fourth Liberty Loan originally subscribed for by such owner and still owned by him at the date of his tax return; and

"(3) The interest on an amount of Bonds, the principal of which does not exceed $30,000, owned by any individual, partnership, association, or corporation, issued upon conversion of the 3½ per centum Bonds of the First Liberty Loan in the exercise of any privilege arising as a consequence of the issue of bonds of the Fourth Liberty Loan, shall be exempt from such taxes.

"The exemption provided in this Section shall be in addition to the exemption provided in Section 7 of the Second Liberty Bond Act in respect to the interest on an amount of bonds and certificates, authorized by such Act and amendments thereto, the principal

of which does not exceed in the aggregate $5,000, and in addition to all other exemptions provided in the Second Liberty Bond Act."

982 The exemptions authorized by subdivisions (1) and (3) of section one are conferred by reason of the ownership of bonds therein referred to, while the exemption authorized by subdivision (2) is a collateral exemption conferred upon the bonds therein referred to by reason of the original subscription for, and continued holding of Fourth Liberty Loan Bonds.

983 (1) **Trusts.**—When income as such is taxable to beneficiaries, as in the case, under the present income tax law, of a trust the income of which is to be distributed annually or regularly between existing beneficiaries, each beneficiary is regarded as the owner of a proportionate part of the bonds held in trust and is entitled to exemption on account of such ownership as if he owned such proportionate part of the bonds directly. In such a case, a subscription by a trustee for bonds of the Fourth Liberty Loan constitutes each beneficiary existing at the time of such subscription an original subscriber for his proportionate part of such bonds, and entitles such beneficiary to the collateral exemption of interest on bonds of previous issues, whether owned by such beneficiary or by the trustee, as if the beneficiary had himself originally subscribed for such proportionate part of the bonds, and a subscription by such beneficiary for bonds of the Fourth Liberty Loan entitles him to the collateral exemption of interest on bonds of previous issues held by the trustee.

984 When income is taxable to the trustee as in the case, under the present income tax law, of a trust the income of which is accumulated for the benefit of unborn or unascertained persons, the trustee is regarded as the owner of all the bonds held in trust and the trust is entitled to exemption on account of such ownership. In such a case a subscription by a trustee constitutes the trustee as such the original subscriber and entitles the trust, on account of such subscription, to the collateral exemption of interest on bonds of previous issues.

985 (2) PARTNERSHIPS.—When income of a partnership is taxable to the individual partners, as under the present income tax law, each partner is treated as the owner of a proportionate part of the bonds held by the partnership and entitled to exemption on account of such ownership as if such partner owned such proportionate part of the bonds directly.

986 When the income of a partnership is taxable to the partnership as such, as under the present [former] excess profits tax law, the partnership is treated as the owner of the bonds held by it and entitled to exemption from taxes assessed upon the income of the partnership as such.

987 With reference to a tax assessed upon an individual partner on his share of the partnership income, such partner, if a partner at the time of the original subscription by the partnership for bonds of the Fourth Liberty Loan, is treated as an original subscriber for a proportionate part of such bonds subscribed for by the partnership and is entitled to the collateral exemption of interest on bonds of previous issues, on account of such original subscription for bonds of the Fourth Liberty Loan, as if he had subscribed directly for such proportionate part of the bonds.

988 With reference to a tax assessed to the partnership upon the partnership income as a whole [no such tax assessed now], such partnership is the original subscriber and entitled to the collateral exemption of interest on bonds of previous issues, on account of such original subscriptions for bonds of the Fourth Liberty Loan.

989 (3) CORPORATIONS.—Income of a corporation as such is taxable to the corporation and is not taxable to the stockholders. The corporation, and not the stockholders, is regarded as the owner of the bonds held by the corporation and entitled to exemption on account of such ownership. When bonds of the Fourth Liberty Loan are subscribed for by the corporation it, and not the stockholders, is the original subscriber and entitled to the collateral exemption of interest on bonds of previous issues on account of such original subscription. (T. D. 2762, Oct. 21, 1918.)

990 **Exempt Status of Interest on Liberty Bonds when Purchased on Installment Plan and Not Fully Paid for on December 31, 1918.**—Reference is made to your telegram dated December 14, 1918: "Please wire collect your ruling is exemption from tax on interest Second and Third Liberty Bonds based on holdings Fourth Liberty Bonds dependent on fourth subscription being fully paid and bonds delivered prior to end December or subscription paid on government plan sufficient." ¶In reply you are advised that an individual who originally subscribed to bonds of the Fourth Liberty Loan to an amount not exceeding $30,000 in accordance with the government plan and made payments in accordance with such plan is not required to pay for such bonds in full on or before December 31, 1918, in order to obtain the exemption provided in Section 1 of the Supplement to the Second Liberty Bond Act, or of interest on bonds of the previous issues referred to in subdivision 2 of said Section 1. ¶Likewise if an individual subscribed for bonds of the Fourth Liberty Loan through a bank by agreeing to pay the subscription price in installments acceptable to the bank, and made payments in accordance with this plan, it will not

be necessary for such individual to pay for the bonds in full on or before December 31, 1918, in order to obtain the exemption mentioned in the preceding paragraph. (Letter to Clark J. Milliron, Los Angeles, Cal., signed by Acting Deputy Commissioner Homer S. Pace, and dated January 3, 1919.)

991 **Government Obligations and War Finance Corporation Bonds Beneficially Owned by Nonresident Aliens May be Tax Exempt Under Certain Conditions.**—Section 3 [of the "Fourth Liberty Bond Act," Act of July 9, 1918]. That notwithstanding the provisions of the Second Liberty Bond Act [¶976] as amended by the Third Liberty Bond Act, or of the War Finance Corporation Act, bonds and certificates of indebtedness of the United States payable in any foreign money or foreign moneys, and bonds of the War Finance Corporation payable in any foreign money or foreign moneys exclusively or in the alternative, shall, if and to the extent expressed in such bonds at the time of their issue, with the approval of the Secretary of the Treasury, while beneficially owned by a nonresident alien individual, or by a foreign corporation, partnership, or association, not engaged in business in the United States, be exempt both as to principal and interest from any and all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority. (Sec. 3, "Fourth Liberty Bond Act" of July 9, 1918.)

992 **Returns of Income From Exempt Securities.**—Where the entire income of an individual is from tax-exempt bonds and where the amount of income other than that from tax-exempt securities is less than the amount of income for which a return is required, no return of income is to be made. Interest from securities which is exempt from tax under section 4 [Sec. 213] of the Income Tax Law is not to be included in returns of income. [But read new law provision at ¶975.] (Art. 26, ¶178, Reg. 33, Rev., Jan. 2, 1918.)

993 **No Ownership Certificates Required.**—It has been called to the attention of this office that banks in certain sections are refusing to pay coupons for interest on bonds of States, counties, cities, or other political subdivisions of the United States, when such coupons are not accompanied by certificates of ownership, * * * .

994 Please inform all parties interested, giving the information wide publicity, that the income derived from the interest upon the obligations of a State, county, city, or any other political subdivision thereof, and upon the obligations of the United States or its possessions is not subject to the income tax [is still not subject to normal income tax] and a certificate of ownership in connection with the coupons or registered interest orders for such interest will not be required.

995 The interest coupons should clearly show on their face whether they are issued by the United States or any political subdivision thereof. If, however, they do not clearly show this, then, of course, an ownership certificate should be required. (T. D. 1892, Nov. 6, 1913.) [Note at ¶1377 that "information at the source" does not apply to interest on obligations of the United States.]

996 Law ¶104. **Income of Foreign Governments from United States Sources.**—"(5) [Gross income does not include] The income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments, or from any other source within the United States;" [¶2875.]

997 Section 30 of the act of September 8, 1916, as amended by the act of October 3, 1917 [¶996 above] provides that the income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities owned by them, or from interest on deposits in banks in the United States of money belonging to such foreign governments, is exempt from the tax imposed by this title. This does not, however, exempt from the tax any income collected by foreign governments from investments in the United States in stocks, bonds, or other domestic securities, which are not bona fide owned by but are loaned to such foreign government. The exemption here provided for is predicated upon the fact that the securities or moneys from which income is derived are actually owned by such foreign governments. (Art. 87, ¶348, Reg. 33, Rev., Jan. 2, 1918.)

998 Law ¶105. **Accident and Health Insurance, and "Damages" Received.**—"(6) [Gross income does not include] Amounts received, through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness;" [¶2864.]

999 The Attorney General has advised upon the basis of recent decisions of the Supreme Court (Doyle v. Mitchell Brothers Company (247 U. S. 179), decided May 20,

last; Lynch v. Hornby [¶2763], Lynch v. Turrish [¶2776] and Southern Pacific Company v. Lowe [¶2804], decided June 3, last) and it is accordingly held that the proceeds of an accident insurance policy received by an individual on account of personal injuries sustained by him through accident are not income taxable under the provisions of Title I of the Act of September 8, 1916, as amended by Title XII of the Act of October 3, 1917, and of Title I of the Act of October 3, 1917.

It is held upon similar principles that an amount received by an individual as the
1000 result of a suit or compromise for personal injuries sustained by him through accident is not income taxable under the provisions of said Titles.

1001 Such provisions of Treasury Decisions and of Regulations No. 33 (Revised) as are inconsistent herewith are hereby revoked. (T. D. 2747, July 12, 1918.)

1002 **Reimbursement of Expenses Incident to an Accident.**—Amounts received from a railroad company by way of reimbursement for expenses incident to an accident are not subject to the income tax. (T. D. 2135, Jan. 23, 1915.)

1003 **Accident Insurance Paid on Death of the Insured.**—The proceeds of accident insurance policies paid upon the death of the person insured to the beneficiaries is to be treated like the proceeds of life insurance policies [¶945]. (T. D. 2135, Jan. 23, 1915.)

1004 Law ¶106. **Income Arising Through the Exercise of an Essential Governmental Function and Accruing to any State, Etc.**—"(7) [Gross income does not include] Income derived from any public utility or the exercise of any essential governmental function and accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, or income accruing to the government of any possession of the United States, or any political subdivision thereof."

1005 Law ¶107. "Whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, prior to September 8, 1916, entered in good faith into a contract with any person, the object and purpose of which is to acquire, construct, operate, or maintain a public utility, no tax shall be levied under the provisions of this title upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, District of Columbia, or political subdivision; but this provision is not intended to confer upon such person any financial gain or exemption or to relieve such person from the payment of a tax as provided for in this title upon the part or portion of such income to which such person or corporation is entitled under such contract;"

1006 Law ¶108. **Compensation of Soldiers and Sailors.**—"(8) [Gross income does not include] So much of the amount received during the present war by a person in the military or naval forces of the United States as salary or compensation in any form from the United States for active services in such forces, as does not exceed $3,500."

1007 Law ¶14. **"Military and Naval Forces of the United States" Defined.**—"The term 'military or naval forces of the United States' includes the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, and the Navy Nurse Corps, Female, but this shall not be deemed to exclude other units otherwise included within such term;"

1008 Law ¶15. **The "Present War" Defined.**—"The term 'present war' means the war in which the United States is now engaged against the German Government."

1009 Law ¶16. **The "Termination of the War."**—"For the purposes of this Act the date of the termination of the present war shall be fixed by proclamation of the President."

1010 **Coupon Interest Accruing Prior to Incidence of Tax.**—Where coupons bear a date prior to March 1, 1913, but have not been presented for payment until 1915, although funds have been on hand to meet them since maturity, no withholding is required for the reason that such coupons represent income that was due and payable and could have been reduced to possession, on demand, prior to the incidence of the income tax.

Where coupons were due and payable in 1911, and have been in default since
1011 that year, funds to meet them having been deposited with the withholding agent since January 1, 1915, it is held that the income represented by such coupons accrued to the owners of the bonds prior to the incidence of the tax, and hence does not constitute taxable and returnable income. (Extract from letter to the Central Trust and Safe Deposit Company of Cincinnati, dated March 16, 1915, embodying a decision by Commissioner W. H. Osborn, signed by A. C. Gilligan, Collector.)

1012 **Alimony.**—Alimony or allowance based on separation agreement is not income to the recipient thereof, nor is it an allowable deduction for the person paying the same. (Art. 4, ¶13, Reg. 33, Rev., Jan. 2, 1918.)

1013 **Salaries of State, City, etc., Employees.**—[There shall not be included as income—] (g) Compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the United States Government. [The present Act does not except such compensation as did, in terms, the Acts of 1913 and of 1916–17, but it will be noted at ¶764, that "States and the political subdivision thereof" are omitted. See ¶2863.] (Art. 5, ¶71, Reg. 33, Rev., Jan. 2, 1918.)

1014 An individual who enters into a contract with a State, or any political subdivision thereof, for the doing of a thing or things specified by the contract, the completion of which will constitute a fulfillment of the contract on the part of such individual, is not an officer or employee of the State or political subdivision thereof within the meaning and intent of section 4 of the income-tax law and the amount received by him from the State or political subdivision thereof under the terms of the contract is to be accounted for as income. (Art. 4, ¶47, Reg. 33, Rev., Jan. 2, 1918.)

1015 **Salaries Received Under Funds of Smith-Lever Act of May 8, 1914, as Taxable Income.**—Section 1200 of the Act of October 3, 1917, amending Section 4 of the Act of September 8, 1916, provides in part that the following income shall be exempt from tax [the present Act does not so provide, in terms, but see ¶764 and ¶2863]:

"The compensation of all officers and employees of a State, or any political subdivision thereof, except when such compensation is paid by the United States Government."

1016 The Smith-Lever Act of May 8, 1914, makes provision for extending the benefits of the Act of Congress approved July 2, 1862 (12 Stat. 503), and the Act approved August 30, 1890 (26 Stat. 417). Under the aforesaid Act certain colleges were established in the several States and supported by the income from lands deeded to the States for that purpose. The colleges receiving the benefits of the two earlier Acts and of the Smith-Lever Act are controlled by states. The funds available under the Smith-Lever Act are appropriated by State legislatures to the colleges to be benefited thereby. The funds appropriated by the Federal Government are paid directly into the State Treasuries as any other subventions by the Federal Government. They lose their identity as funds of the United States by being paid to the states.

1017 There may be considerable difference between the different states in control and government of the colleges receiving the benefits of the Act. If the organization of the college is one which belongs to the state and which the state governs, the legislature may vacate offices, elect new professors and do whatever it thinks necessary in the management of the college. (Head v. Univ., 19 Wall. 526). If, however, the colleges are governed by trustees who are not directly responsible to the State legislators, the employees of the college receiving salaries paid in part from Smith-Lever funds are not employees of the state, and accordingly are not exempt from tax on the ground that they are employees of the State.

1018 Where the employees of Universities receiving salaries paid in part or in whole from Smith-Lever funds are officers or employees of a state, they are not required to include in their income tax returns as taxable income the salaries so received. (T. D. 2668, March 9, 1918.)

1019 Law ¶112. **Deductions Allowed.**—"Sec. 214. (a) That in computing net income there shall be allowed as deductions:" [¶2878] [For "net losses" read at ¶1913.]

1020 Law ¶113. **Business Expenses Are Deductible.**—"(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business," [¶2878]. [For definition of "paid or incurred" see ¶1923.]

1021 Law ¶114. **A Reasonable Allowance For Salaries Is Deductible.**—"including a reasonable allowance for salaries or other compensation for personal services actually rendered, and" [For general discussion of salaries and bonuses, read at ¶1979 and ¶2882.]

1022 Law ¶115. **Certain Rentals Are Deductible.**—"including rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity;" [¶2891]

1023 Law ¶151. **Certain Items of "Expense" Not Deductible.**—"Sec. 215. That in computing net income no deduction shall in any case be allowed in respect of—"

1024 Law ¶152. **Personal Expenses Are Not Deductible.**—"(a) Personal, living, or family expenses;" [¶2965]

1025 Law ¶153. **Amounts Paid Out For New Buildings or For Permanent Improvements Are Not Deductible.**—"(b) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;"

[Read at ¶2967.]

1026 **Additions and Betterments.**—Amounts expended in additions and betterments or for furniture and fixtures which constitute an increase in capital investment and add to the value of the assets are not a proper deduction, but such expenditures when capitalized may be extinguished through annual depreciation deductions, which latter deductions will be computed upon the basis of the cost and probable life of the property. (Art. 132, ¶433, Reg. 33, Rev., Jan. 2, 1918.)

1027 Law ¶154. **Expenditures Covered By Depreciation Allowance Are Not Deductible.**—"(c) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; or"

1028 Law ¶155. **Premiums Paid On Business Life Insurance Are Not Deductible.**—"(d) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy."

1029 Section 32 of the act of September 8, 1916, specifically provides that premiums paid by corporations for insurance covering the lives of officers, employees, or those financially interested in the trade or business of such corporations, shall not be deducted from the gross income of the corporations paying the same. This provision is held to apply to all forms of life insurance, the premiums upon which the corporations may pay, whether or not the corporations are the beneficiaries of the insurance policies upon the death of the insured, and all rules and regulations in conflict with this article are hereby revoked. (Art. 236, ¶664, Reg. 33, Rev., Jan. 2, 1918.)

1030 **Expenses Incurred in Earning Non-Taxable Income.**—Expenses incurred in earning income which is not subject to tax under the income tax law do not constitute allowable deductions in computing net income from other sources which are taxable under the law. (T. D. 2137, Jan. 30, 1915.)

1031 **Business vs. Personal Expenses.**—What constitutes an item allowable as a deduction under the head of business expenses?

1032 **Expenses of Professional Men.**—A physician may claim as deductions the cost of medicines and medical supplies used by hi n in the practice of his profession, expenses paid in the operation and repair of an automobile used in making professional calls, dues to medical societies and subscriptions to medical journals, the expenses of attending medical conventions, the rent paid for office rooms and the hire of office assistants, the cost of the fuel, light, water, telephone, etc., used in such office rooms. Amounts expended for books, medical supplies and surgical instruments of a permanent character are not allowable as deductions.

This, in a general way, outlines the ordinary and usual expenses incurred by

1033 * * * or a professional man, which may be claimed as deductions, and the principles underlying these allowances are equally applicable in the case of any one engaged in a business, trade or profession. In short, all expenses connected directly and solely with the conduct of an income-producing business, trade, profession or vocation, are allowable.

Items of personal expense or items connected in any way with the support, main-

1034 tenance and well-being of a family are not allowed; neither are the amounts paid for tools, implements, vehicles, machinery, or surgical instruments which are more or less permanent in character, nor the cost of medical, law or other professional books nor amounts expended in making permanent improvements or betterments of any kind whatsoever, allowable as deductions. These latter items are held to be investments of capital upon which depreciation may be claimed.

If a physician, or other professional or business man, rents a home and uses

1035 a portion of same for professional or business purposes, may any portion of the rent paid for that home be claimed as a business expense? (Answer.) Yes. The proportion of the rent paid which is properly chargeable to the number of rooms so used may be claimed as a deduction. (Questions 46 and 57, 1918 Income Tax Primer.)

1036 **Rent For Residential Property.**—In the case of a professional man who rents a property for residential purposes but receives there clients, patients, or callers in connection with his professional work (the place of business being elsewhere), no part of the rent is deductible as business expense. (Art. 8, ¶114, Reg. 33, Rev., Jan. 2, 1918.)

1037 Employment of Minor Children By Parents.—If I employ a minor son or daughter to assist me in my business or trade and I pay a salary or wage for such assistance, may I claim the amount as a deduction? (Answer.) No. If, however, the son or daughter has attained his or her majority, the amount of compensation paid for his or her services may be so claimed. (Question 48, 1918 Income Tax Primer.)

1038 Allowances to Minor Children.—The father is legally entitled to the service of his minor children. As a rule, allowances which he gives them, whether said to be in consideration of service or otherwise, are not allowable deductions, in his return of income nor are they income to the children. (Art. 8, ¶104, Reg. 33, Rev., Jan. 2, 1918.)

1039 Paying Salary to Self.—Can a taxpayer claim a deduction for his own remuneration? (Answer.) Wages or salary drawn by a taxpayer from his own business are more in the nature of a charge out of profits than a charge against profits. If such could be deducted they would merely be added to his income, the effect of which would be to take money out of one pocket and put it in another. Therefore, no deduction can be claimed. (Question 49, 1918 Income Tax Primer.)

1040 Expenses of Salesmen Working on Commission Basis.—Can a salesman working on a commission basis claim as deductions the amounts expended from his own funds for railroad fare, excess baggage, taxicab or street-car fare, show rooms, assistants, advertising, etc.? (Answer.) Yes. If he is not reimbursed for such expenditures by his firm, he should report under Gross Income the total amount of commissions received and he may then claim such expenses as were actually incurred and paid in the earning of those commissions. (Question 51, 1918 Income Tax Primer.)

1041 Reimbursements For Expenses Paid.—Amounts paid out for expense incident to service rendered, and which are reimbursable are not deductible as expense nor are they to be returned as income when received in reimbursements. (Art. 8, ¶112, Reg. 33, Rev., Jan. 2, 1918.)

1042 Amounts paid from a salary received for all services rendered are deductible in returns of income as business expenses, when the expenditures are occasioned by the service in respect of which the salary is paid. (Art. 8, ¶101, Reg. 33, Rev., Jan. 2, 1918.)

1043 Expenditures From Allowances.—The pay and allowance of Army officers are based on the obligation of an officer to provide equipment and mounts as a personal expense. The cost of mounts and equipment is not therefore a deductible expense. (Art. 8, ¶103, Reg. 33, Rev., Jan. 2, 1918.)

1044 Expenses of Commuters.—"A," who is employed in a city, has his home in a suburb. He pays carfare between his home and place of employment and takes his noon lunch in the city. Can the amounts expended for carfare and lunch be claimed as a business expense? (Answer.) No, as such amounts are held to be items of personal expense. (Question 52, 1918 Income Tax Primer.)

1045 Life and Fire Insurance Premiums.—Premium paid for insurance on property used for business purposes is an allowable deduction. Insurance paid on a dwelling owned and occupied by a taxpayer is a personal expense and not deductible. Premium paid for life insurance by the insured is not deductible. (Art. 8, ¶109, Reg. 33, Rev., Jan. 2, 1918.)

1046 Can the amount of life insurance premiums and premiums paid for insurance on my residence property be claimed as deductions? (Answer.) No, as these are held to be items of personal expense. If, however, you pay premiums on insurance policies covering farm buildings, other than your dwelling house, or on any property used for business purposes, these premiums are allowable as deductions. (Question 54, 1918 Income Tax Primer.)

1047 Premium on Fidelity Bond.—Where an employee is required to furnish bond and pay the premium on such bond, as a necessary incident of his employment, the premium on the bond will constitute an allowable deduction in computing net income. (T. D. 2090, Dec. 14, 1914.)

1048 Expenses in Connection With Rental Property.—This office is in receipt of your letter of February 18, 1915, and in reply thereto you are advised that the amount of rental received from a piece of real property should be included in any personal annual return of net income the landlord may be required to render for the year in which received, and deduction may be claimed on account of any expense incurred in the maintenance of the

said property, or its use, for rental purposes, including amounts paid for repairs, insurance, fuel, light and water, and janitor and elevator service, if any, and in addition thereto an amount representing a reasonable allowance for the wear and tear of the property arising from its use for rental purposes may be claimed as a deduction, but no claim for depreciation should be made on account of any amount of expense of restoring property or making good the exhaustion thereof for which a deduction is claimed elsewhere in the return. (Letter to The Corporation Trust Company, signed by Acting Commissioner David A. Gates, and dated Feb. 26, 1915.)

Other Expenses.—[In general, the above regulations, in their application, have to do with individuals only. For the regulations applicable to individuals and corporations generally see "Expenses" under "Corporations," at ¶1943.]

1049 Law ¶116. **All Interest Paid or Accrued on Indebtedness With One Exception Is Deductible.**—"(2) All interest paid or accrued within the taxable year on indebtedness" [¶2895.] [For construction of "paid or accured" see ¶1923].

1050 Law ¶117. **Interest Paid in Connection With Holdings in Certain Tax-Free Obligations and Securities Is Not Deductible.**—"except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917), the interest upon which is wholly exempt from taxation under this title as income to the taxpayer,"

1051 **Interest on Indebtedness Incurred for the Payment of Dividend Paying Stock is Deductible for Both Normal Tax and Supertax Purposes.**—Would you be good enough to advise us by telegram at our expense, whether interest upon a note the proceeds of which were used for the purchase of dividend-paying stock would be allowed as a full deduction or only as a deduction in arriving at the amount of income subject to the surtax? (Answer.) Interest upon a note the proceeds of which are used to purchase dividend-paying stock allowable as a deduction for normal and additional tax purposes. (Letter of inquiry from Harris, Forbes & Company, New York, N. Y., and telegram of reply thereto signed by Commissioner Daniel C. Roper, and dated Nov. 19, 1917.)

1052 Law ¶119. **Taxes Paid or Accrued Are Deductible.**—"(3) Taxes paid or accrued within the taxable year imposed" [For construction of "paid or accrued" see ¶1923].

1053 Law ¶120. **United States Taxes Except Income and Excess-Profits Taxes, Are Deductible.**—"(a) by the authority of the United States, except income, war-profits and excess-profits taxes; or"

1054 Law ¶121. **Taxes Imposed by United States Possessions Are Deductible or Allowed as a Credit.**—"(b) by the authority of any of its possessions, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 222 [¶1059]; or"

1055 Law ¶122. **State and Municipal Taxes Are Deductible.**—"(c) by the authority of any State or Territory, or any county, school district, municipality, or other taxing subdivision of any State or Territory,"

1056 Law ¶123. **Certain Assessments Against Local Benefits Are Not Deductible.**—"not including those assessed against local benefits of a kind tending to increase the value of the property assessed; or"

1057 Law ¶124. **Taxes Imposed By Foreign Countries Are Either Deductible By or Allowed as a Credit to Citizens and Residents.**—"(d) in the case of a citizen or resident of the United States, by the authority of any foreign country, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 222 [¶1059];"

1058 **Inheritance Taxes.**—This office is in receipt of your letter of February 4, 1916, and in reply you are advised that a collateral inheritance tax levied under the laws of the State of New York being, as it is, a charge against the corpus of the estate, does not constitute such an item as can be allowed as a deduction in computing income tax liability to either the estate or a beneficiary thereof. (Letter to Charles J. McDermott, 2 Rector Street, New York, N. Y., signed by Deputy Commissioner G. E. Fletcher, and dated Feb. 10, 1916.)

Regulations Under "Taxes Deductible."—[Read at ¶2036 and at ¶2897.]

1059 Law ¶226. **Credit For Taxes.**—"Sec. 222. (a) That the tax computed under Part II [individual normal and surtax] of this title shall be credited with:" [¶3008.]

1060 Law ¶227. **Certain Income and Excess-Profits Taxes Paid to Foreign Countries and All Such Taxes Paid to Possessions of the United States By Citizens to be Credited.**—"(1) In the case of a citizen of the United States, the amount of any income, war-profits and excess-profits taxes paid during the taxable year to any foreign country, upon income derived from sources therein, or to any possession of the United States; and" [¶3008.]

1061 Law ¶228. **Income and Excess-Profits Taxes Paid To Possessions of the United States By Residents Are To Be Credited.**—"(2) In the case of a resident of the United States, the amount of any such taxes paid during the taxable year to any possession of the United States; and" [¶3008.]

1062 Law ¶229. **Certain Income and Excess-Profits Taxes Paid to Foreign Countries By Alien Residents Are To Be Credited.**—"(3) In the case of an alien resident of the United States who is a citizen or subject of a foreign country, the amount of any such taxes paid during the taxable year to such country, upon income derived from sources therein, if such country, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; and" [¶3008.]

1063 Law ¶230. **Proportionate Parts of Certain Income and Excess-Profits Taxes Paid to Foreign Countries and of All Such Taxes Paid to Possessions of the United States To Be Credited to Members of Partnerships and to Beneficiaries of Estates or Trusts.**—"(4) In the case of any such individual who is a member of a partnership or a beneficiary of an estate or trust, his proportionate share of such taxes of the partnership or the estate or trust paid during the taxable year to a foreign country or to any possession of the United States, as the case may be." [¶3008.]

1064 Law ¶231. **Adjustment of any difference between amount of tax paid and amount accrued.**—"(b) If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Commissioner who shall redetermine the amount of the tax due under Part II of this title for the year or years affected, and the amount of tax due upon such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 252 [¶2488]. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the taxpayer to give a bond with sureties satisfactory to and to be approved by the Commissioner in such penal sum as the Commissioner may require, conditioned for the payment by the taxpayer of any amount of tax found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require." [¶3012.]

1065 Law ¶232. **Credits for Income and Excess-Profits Taxes Paid To Foreign Countries and to Possessions of the United States to be Allowed Only if Satisfactory Evidence be Furnished.**—"(c) These credits shall be allowed only if the taxpayer furnishes evidence satisfactory to the Commissioner showing the amount of income derived from sources within such foreign country or such possession of the United States, and all other information necessary for the computation of such credits."]¶3011.]

1066 Law ¶126. **All Business Losses Not Compensated For Are Deductible.**—"(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in trade or business;" [¶2901.]

1067 Losses actually sustained during the year incurred in trade are limited by the language of the act itself.

"In trade," is synonymous with *business*.

1068 "Business" has been defined as:

"That which occupies and engages the time, attention and labor of any one for the purpose of livelihood, profit, or improvement; that which is his personal concern or interest; employment, regular occupation, but it is not necessary that it should be his sole occupation or employment."

The doing of a single act incidentally or of necessity not pertaining to the particular

1069 business of the person doing the same will not be considered engaging in or carrying on the business. (T. D. 1989, June 2, 1914.)

1070 Loss to be deductible must be an absolute loss, not a speculative or fluctuating valuation of continuing investment [but read at "Inventories" at ¶1861] but must be an actual loss, actually sustained and ascertained during the tax year for which the deduction is sought to be made; it must be * * * and be determined and ascertained upon an actual, a completed, a closed transaction.

The term "in trade," as used in the law and in Treasury Decision 2005, is held to
1071 mean the trade or trades in which the person making the return is engaged; that is, in which he has invested money otherwise than for the purpose of being employed in isolated transactions, and to which he devotes at least a part of his time and attention. A person may engage in more than one trade and may deduct losses incurred in all of them, provided, that in each trade the above requirements are met. As to losses on stocks, grain, cotton, etc., if these are incurred by a person engaged in trade to which the buying or selling of stocks, etc., are incident as a part of the business, as by a member of a stock, grain, or cotton exchange, such losses may be deducted [under (4) ¶1056]. A person can be engaged in more than one business, but it must be clearly shown in such cases that he is actually a dealer, or trader, or manufacturer, or whatever the occupation may be, and is actually engaged in one or more lines of recognized businesses before losses can be claimed [under (4) ¶1066] with respect to either or more than one line of business, and his status as such dealer must be clearly established. (T. D. 2090, Dec. 14, 1914.)

1072 (1) A person may have more than one business in the sense of being engaged in more than one trade, and may [under (4) ¶1066] deduct losses incurred in all of them, provided that in each trade it can be clearly shown that he is actually a dealer, or trader, or manufacturer, or whatever the occupation may be.

Neither the investment by an individual of money in the stock of a company
1073 not the employment by the company of his services in any official capacity can serve to make the business in which the company was engaged a matter of his individual trade. (T. D. 2135, Jan. 23, 1915.)

1074 **Shrinkage in Book Values** [In connection with the following read at "Inventories" at ¶1861.].—For the purpose of checking up returns and ascertaining the amount of taxable income of individuals and corporations, you are given the following instructions and rules for use in determining the amount of deductible loss allowable to individuals and corporations * * * .

The loss considered here has in it no element of "depreciation" or "allowance for
1075 wear and tear," or "compensation from insurance or otherwise." It is to be such loss as is absolute and complete and which has been actually sustained.

1076 Depreciation as an allowable deduction in ascertaining annual net income for the income tax is separately provided for, and is not to be confused with loss. The depreciation provided to be taken as a deduction in a return of income is the value assigned to the deterioration of physical improvements or assets, such as are susceptible of having their value lessened through wear and tear, use or obsolescence.

The depreciation referred to in the income tax law does not relate to evidence of a
1077 right or interest in property, and hence, any shrinkage in the value of bonds, stocks and like securities, due to fluctuations in their market value, is not deductible in a return of income as depreciation or loss.

Losses may be sustained by individuals or corporations on personal or real property.
1078 * * * Loss to be deductible must be an absolute loss, not a *speculative* or *fluctuating* valuation of continuing investment, but must be an actual loss, actually sustained and ascertained during the tax year for which the deduction is sought to be made; it must be incurred in trade, and be determined and ascertained upon an actual, a completed, a closed transaction. (T. D. 2005, July 8, 1914.)

1079 Book values which reflect a shrinkage in the value of assets are not a basis for determining taxable income. (T. D. 2090, Dec. 14, 1914.)

1080 (2) A loss is none the less actual because an individual can not divest himself of the possession of worthless stock by sale, but that condition alone does not give the loss in question such a character as appears to the department to have been contemplated by the income-tax law. (T. D. 2135, Jan. 23, 1915.)

1081 **Loss—Definition.**—The difference between "losses * * * incurred in his business or trade" ["if incurred in trade or business"] (4th deduction [¶1066]) and losses "in transactions entered into for profit but not connected with his business or trade" [if incurred in any transaction entered into for profit, though not connected with the trade or business"] (5th deduction [¶1084]), is illustrated by the difference between the definitions of "*avocation*": That which takes one from his regular calling; a minor occupation; and "*vocation*": The occupation or pursuit to which one devotes his time or life, a calling. It is possible for a man to give sufficient time, attention, and capital to the pursuit of different lines of business to constitute more than one avenue of "business or trade or employment," *his* business or trade.

Paragraph 4 [¶1066] of Section 5 (a), Act of September 8, 1916, provides for losses
1082 "actually sustained during the year, incurred in *his* business or trade, etc.", ["If incurred in trade or business"]. These would be losses under the head of vocation.

Paragraph 5 [¶1084] of section 5 (a), Act of September 8, 1916, provides for losses
1083 actually sustained during the year in transactions entered into for profit but not

connected with *his* business or trade [the trade or business]; that is, losses under the head of "avocation;" that which takes one from his regular calling; a minor occupation. Losses under the head of "avocation" may be deducted * * * . (Art. 8, ¶120–122, Reg. 33, Rev., Jan. 2, 1918.)

1084 Law ¶127. **Losses in Transactions Entered into for Profit Outside of Business, if not Compensated for, are Deductible.**—"(5) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit, though not connected with the trade or business;" [¶2901.]

1085 Law ¶129. **Property Losses Outside of Business, if not Compensated for, are Deductible.**—"(6) Losses sustained during the taxable year of property not connected with the trade or business"

1086 Law ¶131. "if arising from fires, storms, shipwreck, or other casualty, or from theft, and if not compensated for by insurance or otherwise;" [¶2901.]

1087 Losses arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise are easily ascertained and there would not appear to be any chance of an erroneous construction as to these. (T. D. 1989, June 2, 1914.)

General Regulations on "Losses."—[Read at ¶2063 and at [¶2901.]

1088 Law ¶132. **Worthless Debts are Deductible.**—"(7) Debts ascertained to be worthless and charged off within the taxable year;"

Regulations on "Worthless Debts."—[Read under identic law provision at "Corporations," ¶2090. Read also at ¶2906.]

1089 Law ¶133. **Reasonable Allowance for Depreciation of Business Property is Deductible.**—"(8) A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence;" [¶2910.]

1090 **Depreciation of Farm Buildings.**—Depreciation of farm buildings, other than a dwelling occupied by the owner, actually sustained within the year, in excess of repairs made, will be considered an allowable deduction. (T. D. 2090, Dec. 14, 1914.)

1091 **Depreciation of Costumes.**—Costumes purchased and used exclusively in the production of a play and which are not adapted for occasional personal use and are not so used are part of the equipment of a business, and as such subject to depreciation in value on account of wear and tear arising from their use in the business, a reasonable allowance for such depreciation may be claimed in returns of income. (Art. 8, ¶124, Reg. 33, Rev., Jan. 2, 1918.)

1092 **Depreciation of Good Will.**—Good will does not represent a value attaching to physical property. It is held to be an intangible asset whose value, separate and apart from the business with which it is connected, is not capable of determination. For the purpose of income tax it is capable of neither appreciation nor depreciation. An amount claimed to represent its decline in value is not an allowable deduction from gross income in computing the tax liability of an individual or corporation. (Art. 8, ¶123, Reg. 33, Rev., Jan. 2, 1918.)

General Regulations on "Depreciation."—[Read under identic law provision at "Corporations," ¶2105. Read also at ¶2910.]

1093 Law ¶134. **A Reasonable Amount for the Amortization of Certain Assets (Special —Due to the War) is Deductible.**—"(9) In the case of buildings, machinery, equipment, or other facilities, constructed, erected, installed, or acquired, on or after April 6, 1917, for the production of articles contributing to the prosecution of the present war, and in the case of vessels constructed or acquired on or after such date for the transportation of articles or men contributing to the prosecution of the present war, there shall be allowed a reasonable deduction for the amortization of such part of the cost of such facilities or vessels as has been borne by the taxpayer, but not again including any amount otherwise allowed under this title or previous Acts of Congress as a deduction in computing net income." [¶2922.]

1094 Law ¶135. **A Redetermination of the Amortization Deduction May be Effected.**—"At any time within three years after the termination of the present war, the Commissioner may, and at the request of the taxpayer shall, reexamine the return, and if he then

finds as a result of an appraisal or from other evidence that the deduction originally allowed was incorrect, the taxes imposed by this title and by Title III [war excess-profits tax] for the year or years affected shall be redetermined; and" [¶2922]

1095 Law 136. **Adjustment of Under- or Over-Payment of Taxes Due to Redetermination of Amoritzation Deduction.**—"the amount of tax due upon such redetermination, if any, shall be paid upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 252 [¶2488.]" [¶2922]

1096 Law ¶137. **A Reasonable Allowance for Depletion of Mines, Oil and Gas Wells, Other Natural Deposits, and Timber, and for Depreciation of Improvements is Deductible.**—"(10) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case, based upon cost including cost of development not otherwise deducted:" [¶2929]

1097 Law ¶138. **Basis in the Case of Properties Acquired Prior to March 1, 1913.**—"Provided, That in the case of such properties acquired prior to March 1, 1913, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date:"

1098 Law ¶139. **Basis in the Case of Mines or Wells Discovered by the Taxpayer on or After March 1, 1913.**—"Provided further, That in the case of mines, oil and gas wells, discovered by the taxpayer, on or after March 1, 1913, and not acquired as the result of purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery, or within thirty days thereafter;"

1099 Law ¶140. **Depletion and Depreciation Allowance to be Made in Accordance with Regulations.**—"such reasonable allowance in all the above cases to be made under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary."

1100 Law ¶141. **Depletion and Depreciation of Improvements Allowance to be Apportioned Between the Lessor and the Lessee.**—"In the case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and lessee;"

1101 Depletion or return of capital investment in the case of an individual owner or lessee will be calculated in the same manner as provided for corporate owners or lessees. (Art. 8, ¶86, Reg. 33, Rev., Jan. 2, 1918.)

Regulations on "Depletion of Mines, Wells and Timber Lands."—[Read under identic law provisions at "Corporations" at ¶2167. Read at ¶2929.]

1102 Law ¶142. **Certain Contributions or Gifts Made by Individuals are Deductible to a Limited Amount.**—"(11) Contributions or gifts made within the taxable year to corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to the special fund for vocational rehabilitation authorized by section 7 of the Vocational Rehabilitation Act, to an amount not in excess of 15 per centum of the taxpayer's net income as computed without the benefit of this paragraph. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary." [¶2962]

1103 Contributions or gifts, not in excess of 15 per cent of taxable net income, made within the year to corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or to societies for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual.

1104 "Taxable net income" [the taxpayer's net income] as used in section 5a [214(a)], ninth [eleventh] deduction, is construed to mean gross income, less deductions (except ninth [eleventh] deduction above) and less excess-profits tax, if any.

In connection with claim for this deduction on returns of income there shall be

1105 stated:

(*a*) The name and address of each organization to which a gift was made.

(b) The date and amount of the gift in each case.

Where the gift is other than money, the basis for calculation of the value of the
1106 gift shall be the fair market value of the property the subject of gift at the time of the gift. (Art. 8, ¶87–92, Reg. 33, Rev., Jan. 2, 1918.)

1107 Receipt is acknowledged of your letter dated December 5, 1917, referring to contributions or gifts made by citizen and resident individuals of the United States to corporations or associations organized and operated exclusively for religious, charitable or scientific purposes which may be considered as a deduction for tax purposes, in accordance with the provisions of the ninth paragraph added to Section 5 (a), Act of September 8, 1916, by Section 1201, Act of October 3, 1917.

1108 You present several inquiries which are repeated and answered in the order stated by you.

1109 "Are gifts to foreign organizations of a character specified in the Law to be also deducted?" Such contributions or gifts may be considered in computing the amount allowable as a deduction under the provisions of paragraph nine.

1110 "Is the Red Cross to be included as a charitable organization?" It is held that the American National Red Cross falls within the class of associations enumerated in paragraph nine.

1111 "Is a church to be considered a religious institution? Of course, we known that 'the Church' is a religious institution, but is any particular church so considered?" It is held that every church constitutes a religious corporation or association for the purposes of the deduction provided by the ninth paragraph.

"In this connection, are donations made to missionary funds, to the church build-
1112 ing funds and for the benefit of other activities of the church to be deductible?" It is held that all such donations, being for the benefit or furtherance of religious activities, constitute items which may be considered in computing the deductions provided by the ninth paragraph. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated December 24, 1917.)

1113 With reference to the ninth paragraph of Section 5 of the Act of September 8, 1916, as amended, how am I to determine to what extent contributions or gifts made to corporations or associations, organized exclusively for religious, charitable, scientific or educational purposes, societies for the Prevention of Cruelty to Children or Animals, may be claimed as a deduction?

You should first ascertain what your taxable net income would be were you not
1114 entitled to a deduction on account of contributions or gifts made to such corporations, associations or societies, and then if the aggregate of your contributions and gifts made during the year to such organizations does not exceed 15 per cent of your taxable net income so computed, their aggregate amount may be entered in the space provided therefor under General Deductions on a personal return form. Is such aggregate amount exceeds 15 per cent of your taxable net income so computed, the excess cannot be claimed.

For example: Your total taxable net income amounts to $20,000. During the
1115 year you have contributed to the National Red Cross $1,000, to the Young Men's Christian Association $1,000, toward the construction of a new church $1,000, and to the Associated Charities of your home city $500, a total of $3,500. Fifteen per cent of your total net income amounts to $3,000, therefore, this latter amount may be claimed as a deduction, and the balance of your contributions and gifts may not be claimed.

1116 During 1917 I contributed $100 toward the support of a needy family. May this contribution be claimed as a deduction? (Answer.) Contributions of gifts made to individuals do not constitute allowable deductions. (Questions 86 and 87, 1918 Income Tax Primer.)

1117 Dividends of Prior Years Received in Taxable Year may be Added to Amount in Line M on Form 1040 to Determine Amount on Which to Compute Allowable Contributions of 15%.—Client has $25,000 income line M, Form 1040 [total net income (without deducting contributions)]; also received $10,000 block F column 5 [dividends taxable at rates of prior years]. Can he deduct $5,250 as contributions to charitable organizations? (Answer.) Under circumstances stated clients may deduct contributions allowable as such not to exceed $5,250. (Telegram of inquiry from A. Iselin & Co., New York, N. Y., and the telegraphic reply thereto signed by Commissioner Daniel C. Roper, and dated February 27, 1918.)

1118 Red Cross Donations by Corporations.—Are such contributions deductible by corporation on its tax returns? (Answer.) Red Cross contributions not deductible by corporations. (Part of telegram of inquiry from Loomis, Suffern and Fernald, New York, N. Y., and the answer thereto signed by Commissioner Daniel C. Roper, and dated May 23, 1918.)

1119 Law ¶144. **Adjustment for Substantial Losses Sustained in the Taxable Year 1919 Because of Material Reduction of Inventory Values for 1918, or Because of Certain Rebate Payments.**—"(12) (a) At the time of filing return for the taxable year 1918 a taxpayer may file a claim in abatement based on the fact that he has sustained a substantial loss (whether or not actually realized by sale or other disposition) resulting from any material reduction (not due to temporary fluctuation) of the value of the inventory for such taxable year,

1120 Law ¶145. "or from the actual payment after the close of such taxable year of rebates in pursuance of contracts entered into during such year upon sales made during such year.

1121 Law ¶146. "In such case payment of the amount of the tax covered by such claim shall not be required until the claim is decided, but the taxpayer shall accompany his claim with a bond in double the amount of the tax covered by the claim, with sureties satisfactory to the Commissioner, conditioned for the payment of any part of such tax found to be due, with interest. If any part of such claim is disallowed then the remainder of the tax due shall on notice and demand by the collector be paid by the taxpayer with interest at the rate of 1 per centum per month from the time the tax would have been due had no such claim been filed.

1122 Law ¶147. "If it is shown to the satisfaction of the Commissioner that such substantial loss has been sustained, then in computing the tax imposed by this title the amount of such loss shall be deducted from the net income.

1123 Law ¶148. "(b) If no such claim is filed, but it is shown to the satisfaction of the Commissioner that during the taxable year 1919 the taxpayer has sustained a substantial loss of the character above described then the amount of such loss shall be deducted from the net income for the taxable year 1918 and the tax imposed by this title for such year shall be redetermined accordingly. Any amount found to be due to the taxpayer upon the basis of such redetermination shall be credited or refunded to the taxpayer in accordance with the provisions of section 252 [¶2488]."

[In relation to the above read at ¶2963.]

1124 Law ¶156. **Credits Allowed.—For Normal Tax Only.**—"Sec. 216. That for the purpose of the normal tax only there shall be allowed the following credits:"

1125 Law ¶157. **Dividends as Credit for Normal Tax Only.**—"(a) The amount received as dividends from a corporation which is taxable under this title upon its net income, and amounts received as dividends from a personal service corporation out of earnings or profits upon which income tax has been imposed by Act of Congress;"

1126 (a) For the purpose of the normal tax only, the income embraced in a personal return shall be credited with the amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company or association, trustee, or insurance company, which is taxable upon its net income. (Art. 9, ¶126, Reg. 33, Rev., Jan. 2, 1918.)

1127 Law ¶158. **All Interest on Government and War Finance Corporation Bonds which has been Included as Gross Income is Credited for Normal Tax Purposes.**—"(b) The amount received as interest upon obligations of the United States and bonds issued by the War Finance Corporation, which is included in gross income under section 213 [¶975];"

1128 Law ¶159. **A Specific Exemption of Income is Allowed for Normal Tax Purposes. —Single Persons.**—"(c) In the case of a single person, a personal exemption of $1,000, or" [¶2970]

1129 Law ¶160. **Married Persons Living Together and Heads of Families.**—"in the case of the head of a family or a married person living with husband or wife, a personal exemption of $2,000." [¶2969]

1130 **Head of a Family.**—A head of a family is a person who actually supports and maintains one or more individuals who are closely connected with him by blood relationship, relationship by marriage, or by adoption, and whose right to exercise family control and provide for these dependent individuals is based upon some moral or legal obligation. (Art. 14, ¶153, Reg. 33, Rev., Jan. 2, 1918.)

1131 A head of a family is a person who actually supports and maintains one or more of the individuals described in Paragraph 153 of the regulations in one household. In the absence of continuous actual residence together, whether or not a person with dependents is a head of a family within the meaning of the statute must depend on the character of the separation. If a child, or other dependent is away only temporarily at school or on a visit, the common home being still maintained, the additional exemption applies. If, however, the dependent continuously makes his home elsewhere his benefactor is not the head of a family, irrespective of the question of support. (T. D. 2692, April 8, 1918.)

1132 **"Living with Husband or Wife."**—In the case of a married man or married woman the joint exemption replaces the individual exemptions only if his wife lives with him or her husband lives with her. In the absence of continuous actual residence together, whether or not a man or woman has a wife or husband living with him or her within the meaning of the statute must depend on the character of the separation. If merely occasionally and temporarily a wife is away on a visit or a husband is away on business, the joint home being maintained, the additional exemption applies. The unavoidable absence of a wife or a husband at a sanitarium or asylum on account of illness does not preclude claiming the exemption. If, however, the husband voluntarily and continuously makes his home at one place and the wife hers at another, they are not living together for the purpose of the statute, irrespective of their personal relations.

1133 Resident aliens claiming exemption because of families or wives residing abroad are not heads of families or married men or women with wives or husbands living with them within the meaning of the statute, and they are in no case entitled to more than their individual exemptions of $3,000 under the earlier Act and $1,000 under the later act [$1,000 only, now]. (T. D. 2692, April 8, 1918.)

1134 Law ¶161. **One $2,000 Specific Exemption Only.**—"A husband and wife living together shall receive but one personal exemption of $2,000 against their aggregate net income;"

1135 Husband and wife living together are entitled to an exemption of $4,000 [$2,000] only from the aggregate net income of both which may be deducted in making the return of such income for taxation. (Art. 10, Reg. 33, Jan. 5, 1914.)

1136 Law ¶162. **$2,000 Specific Exemption May Be Prorated Between Husband and Wife.**—"and in case they make separate returns, the personal exemption of $2,000 may be taken by either or divided between them;"

1137 The exemption allowed husband and wife living together may be taken by one or divided between them in such ratio as they may determine. (Art. 26, ¶170, Reg. 33, Rev., Jan. 2, 1918.)

1138 Law ¶163. **Additional $200 Specific Exemption for Each Dependent.**—"(d) $200 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer, if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective." [¶2971]

1139 **Relation of Specific Exemption to the Surtax.**—Personal exemptions from tax are granted in respect of the normal income tax only. Where the total of allowable exemptions and credits exceeds the amount of net income, the excess of such exemptions may not be availed of as against the additional tax. (Art. 14, ¶154, Reg. 33, Rev., Jan. 2, 1918.)

1140 **Husband or Wife Dying During Taxable Year.**—Where a husband or wife having a taxable income dies within a calendar year, and the full exemption for the calendar year is used by the personal representative in making return for the deceased, if the survivor is also required to make a return at the close of the calendar year for income received within that calendar year the full personal exemption, according to the marital status of the survivor at the close of the calendar year, may be claimed in a return of income. [Modified by the instructions on Form 1040A—for calendar year 1918. (Page 1 of Instructions—VI.)] (Art. 14, ¶156, Reg. 33, Rev., Jan. 2, 1918.)

1141 **Marital Status at Time of Making Claim and at End of Taxable Year Governs.**—The single or married status of the person claiming the specific exemption shall be determined as of the time of claiming such exemption in such claim he made within the year for which return is made, otherwise the status at the close of the year. [Modified by the instructions on Form 1040A—for calendar year 1918. (Page 1 of Instructions—VI.)] (Art. 10, Reg. 33, Jan. 5, 1914.)

1142 Law ¶233. **Returns by Individuals.**—"Sec. 223. That every individual having a net income for the taxable year of $1,000 or over if single or if married and not living with husband or wife,"

1143 Law ¶234. "or of $2,000 or over if married and living with husband or wife,"

1144 Law ¶235. "shall make under oath [¶1451] a return stating specifically the items of his gross income and the deductions and credits allowed by this title."

[For "Returns by Individuals" in Reg. No. 45, see ¶3013.]

1145 Returns are required of all unmarried persons * * * having a net income of $1,000 or over.

And all married persons having a net income of $2,000 or over.

Heads of families who are married will be required to make returns of income when having a net income of $2,000 or over.

Heads of families who are unmarried will be required to make returns of income when having a net income of $1,000 or over, though the basic exemption which may be claimed in a return of income will be $2,000. (Art. 25, ¶169, Reg. 33, Rev., Jan. 2, 1918.)

1146 **Forms for Making Returns.**—Forms of returns are provided by the Commissioner of Internal Revenue, and are to be had from the collectors of internal revenue of the several collection districts. (Art. 23, ¶166, Reg. 33, Rev., Jan. 2, 1918.) [See list of forms at back of book.]

1147 **Manner of Reporting Tax-Free Covenant Bond Interest in Block G and Rent Payments in Block D on Form 1040.**—Reference is made to your letter dated February 15, 1918, in regard to the execution of income tax return Form 1040. You inquire if a taxpayer in filling in Block G, interest on "tax-free" covenant bonds, is required to itemize the payments or only show the total amount of interest received during the calendar year. ¶In reply, you are advised that it is not necessary to enter in Block G the separate payments of interest on "tax-free" covenant bonds, but the total amount of interest received during the calendar year from each debtor corporation should be shown.

1148 You also inquire if the name and address of each tenant must be listed separately under Block D, income from rents and royalties, and you state that in the case where a large office building is owned by a taxpayer it would be difficult for him to furnish the names and addresses of all the tenants and it would also be difficult to apportion repairs and property losses. ¶In reply to this inquiry, you are advised that in cases where a large office building is owned by an individual, the amount received from each tenant should be reported separately under Block D in cases where the amount of rent received from the tenant equals $800 [$1,000] or more, but only the total amount of income received from the tenants paying rental less than $800 [$1,000] is required to be shown. It will not be necessary to apportion the repairs and property losses with respect to each tenant in the building, but the total thereof must be shown. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated March 22, 1918.)

1149 **Manner of Reporting Profits and Losses in Block C on Form 1040.**—Reference is made to your letter of February 7, 1918, in which you state that the Collector's office, Third Massachusetts District, is requiring individuals who fill out income tax returns, Forms 1040, to submit a list of all securities, together with the information called for in C, on page 3, and you ask if it is necessary to submit a list detailing each sale. ¶In reply you are advised that if the profits or losses on sales made through any one broker aggregated [$1,000] or more, you should report the transactions on a separate line with the name and address of the broker. The total of other transactions should be reported, but it is not necessary to give details. If, however, this office should ask for further information the taxpayer should be able to furnish all the details requested. (Letter to Lee, Higginson & Company, Boston, Mass., signed by Deputy Commssioner L. F. Speer, and dated March 25, 1918.)

1150 Law ¶236. **Joint or Separate Returns of Husband and Wife.**—"If a husband and wife living together have an aggregate net income of $2,000 or over, each shall make such a return unless the income of each is included in a single joint return."

1151 If the husband and wife not living apart have separate estates, the income from both may be made on one return, but the amount of income of each, and the full name and address of both, must be shown in such return.

1152 The husband, as the head and legal representative of the household and general custodian of its income, should make and render the return of the aggregate income of himself and wife, and for the purpose of levying the income tax it is assumed that he can ascertain the total amount of said income.

1153 If a wife has a separate estate managed by herself as her own separate property * * * , she may make return of her own income and if the husband has other * * * income, making the aggregate of both incomes more than $4,000 [$2,000] the wife's return should be attached to the return of her husband, or his income should be included in her return in order that a deduction of $4,000 [$2,000] may be made from the aggregate of both incomes. The tax in such case, however, will be imposed only upon so much of the aggregate income of both as shall exceed $4,000 [$2,000].

If either husband or wife, separately has an income equal to or in excess of $3,000,
1154 [$2,000] a return of annual net income is required under the law, and such return must include the income of both, * * * .
1155 If the aggregate net income of both exceeds $4,000 [$2,000] an annual return of their combined incomes must be made in the manner stated, * * * . They are jointly and separately liable for such return and for the payment of the tax. Art. 10, Reg. 33, Jan. 5, 1914.)

1156 **Wife's Income.**—Unless the wife has a separate estate which requires her to file a separate return of income, or to join with her husband in a return which shall set forth her income separately, her husband should include in his return the income accruing to the wife from services rendered by her, or the sale of product of her labor. The actual proceeds coming into the wife's possession during the tax year constitute the income to be included, and not the amount estimated upon acceptance prior to payment for articles sold. (Art. 26, ¶183, Reg. 33, Rev., Jan. 2, 1918.)

1157 **Husband and Wife Filing Separate.**—Where husband and wife file separate returns of income, one of them being filed in time and the other delinquent, such returns are not supplemental of each other and delinquency must be answered for by the one in connection with whose return it occurred. (Art. 26, ¶182, Reg. 33, Rev., Jan. 2, 1918.)

General Law Provisions and Applicable Regulations Relative to Returns.—[Read beginning at ¶1434.]

1158 Law ¶237. **Duly Authorized Agent May Make Return.**—"If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer." [¶3013.]

1159 The return may be made an agent when by reason of illness, absence, or nonresidence the person liable for said return is unable to make and render the same, the agent assuming the responsibility of making the return and incurring penalties provided for erroneous, false, or fraudulent return. (Art. 22, ¶165, Reg. 33, Rev., Jan. 2, 1918.)

1160 Fiduciaries acting for minors or other incompetents will be required to make returns of income according to the marital status of the beneficiaries, * * * . This return will be on Form 1040 or 1040 A. (Art. 27, ¶185, Reg. 33, Rev., Jan. 2, 1918.)

A fiduciary acting for a minor or insane person having a net income of $1,000 or
1161 $2,000, according to the marital status of such person, will be required to file a return for such incompetent on Form 1040 and 1040A and pay the tax found by such return to be due, in addition to the requirement in the preceding paragraph [¶1201] when there is more than one beneficiary of the income of the same trust. (Art. 29, ¶205, Reg. 33, Rev., Jan. 2, 1918.)

1162 When by reason of * * * * insanity, absence, sickness, or other disability the individual is unable to make his own return, the same shall be made by his guardian or duly authorized agent. (Art. 17, Reg. 33, Jan. 5, 1914.)

1163 A committee of the property of an incompetent person is held to be a fiduciary for the purpose of income tax and required to make a return on Form 1040, revised, for the incompetent whenever the amount of income is sufficient to require a return. (Art. 29, ¶203, Reg. 33, Rev., Jan. 2, 1918.)

1164 Fiduciaries acting for minors or incompetent persons are permitted to take the personal exemption as to income derived from property of which they have charge in favor of each ward or beneficiary. (Art. 14, ¶151, Reg. 33, Rev., Jan. 2, 1918.)

1165 In all cases where fiduciaries act for minors or other incompetents they are held, for the purpose of the income tax, to be acting as the agents of such minors or other incompetents and must pay all tax (normal and additional) chargeable on such income in their hands as though the persons for whom they act were acting for themselves. (T. D. 2231, July 26, 1915.)

1166 When the required return has not been made by a person acting as guardian, agent of a nonresident alien, or by one acting in any other capacity in which the

law makes it a duty for him to represent the individual, notice of failure to make such return will be served upon such guardian or agent.

The person upon whom such notice is served may, however, when the facts war-
1167 rant, file evidence with the collector showing that the individual for whom he acts did not receive an income subject to tax during the year, or that the said guardian or agent has filed the return with some other collector. (Art. 18, Reg. 33, Jan. 5, 1914.)

1168 Law ¶239. **Fiduciary Returns For, or as For, an Individual.**—"Sec. 225. "That every fiduciary (except receivers appointed by authority of law in possession of part only of the property of an individual [see ¶1433]) [shall make a return, ¶1175]—" [Read at ¶3019.]

1169 Law ¶21. **The Term "Fiduciary" Defined.**—"The term 'fiduciary' means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person, trust or estate;" [¶3081.]

1170 "Fiduciary" is a term which applies to all persons or corporations that occupy positions of peculiar confidence toward others, such as trustees, executors, or administrators; and the fiduciary for income-tax purposes is any person or corporation that holds in trust an estate of another person or persons.

There may be a fiduciary relationship between an agent and a principal, but the
1171 word "agent" does not denote a "fiduciary" within the meaning of the income-tax law. (Art. 29, ¶189-190, Reg. 33, Rev., Jan. 2, 1918.) [¶3082.]

1172 **Power of Attorney.**—A fiduciary relationship for the purposes of the income tax can not be created by a power of attorney. An agent having entire charge of property with authority to effect and execute leases with tenants entirely on his own responsibility and without consulting his principal, paying taxes and expenses and all other charges in connection with the property out of funds in his hands from collection of rents, merely turning over the net profits from the property periodically to his principal by virtue of authority conferred upon him by a power of attorney, is not a fiduciary within the meaning of the income-tax law. In all cases where no legal trust has been created in the estate controlled by the agent and attorney the liability under the law rests with the principal. (Art. 29, ¶191, Reg. 33, Rev., Jan. 2, 1918.)

1173 **Agents.**—Agents not acting in a fiduciary capacity have no responsibility with reference to withholding the tax on, or making a return of income turned over to resident aliens or citizens of the United States; * * * . [For return by agent as attorney-in-fact see ¶1158.] (T. D. 2090, Dec. 14, 1914.)

1174 A person can not, by a power of attorney, delegate to another a duty which he himself could not perform, * * * a person holding a power of attorney from another is without authority to file [a] certificate as a fiduciary. However, for income-tax purposes he is authorized to file any certificate which his principal, as such, would be entitled to file. (T. D. 2090, Dec. 14, 1914.)

1175 Law ¶240. **Every Fiduciary to Make Return.**—"[Every fiduciary] shall make under oath [¶1451] a return for the individual, estate or trust for which he acts."

1176 Law ¶245. **Fiduciary to Make Return Under Oath as to Correctness.**—"The fiduciary shall make oath that he has sufficient knowledge of the affairs of such individual, estate or trust to enable him to make the return, and the same is, to the best of his knowledge and belief, true and correct."

1177 And the said return shall be signed and sworn to by the fiduciary, if an individual, making same, and his full address must be stated. If the fiduciary is an organization, the return shall be signed and sworn to by the president, secretary, or treasurer of said organization. (Art. 73, Reg. 33, Jan. 5, 1914.)

1178 Notice of failure to file a return as required shall be served upon the fiduciary. (T. D. 2231, July 26, 1915.)

1179 Law ¶185. **Responsibility for Making Return Rests with Fiduciary.**—"(b) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts." [¶2991]

General Law Provisions and Applicable Regulations Relative to Returns.—[Read beginning at ¶1434.]

1180 **Income Accruing Prior to Death to Decedent Dying During His Taxable Year.**—If the net income of a decedent from January 1 to the date of his death within that year as $1,000 or over, if unmarried, or $2,000 or over if married, a return for such

decedent must be made by the executor or administrator, and such executor or administrator may claim all deductions and exemptions to which the decedent would have been entitled under the law. (Art. 4, ¶23, Reg. 33, Rev., Jan. 2, 1918.)

1181 Where a person having a taxable income dies within the calendar year his personal representative in making return for him will be entitled to claim full exemption granted by the statutes for the calendar year. (Art. 14, ¶152, Reg. 33, Rev., Jan. 2, 1918.)

1182 Liability for the tax due from a deceased person, or from his estate, also attaches to the estate itself, and when by reason of distribution of the estate and discharge of the executor or administrator it shall appear that collection of the tax can not be made from the executor or administrator, the collector will make demand on the distributees for their proportionate share of the tax due and unpaid. (Art. 29, ¶198, Reg. 33, Rev., Jan. 2, 1918.)

1183 Appraised Value of Property at Time of Death of Owner, if Subsequent to March 1, 1913, the Basis for Determining Gain or Loss on Subsequent Disposition.—Your Mimeograph Letter to Collectors, dated August 14, 1914, states no appreciation in value of assets due to appraisal or adjustment is taxable income until such appreciation has been converted into cash. T. D. 2090 [¶931] states if property acquired by gift is sold at price greater than appraised value at time property acquired by gift, such gain is taxable income. We assume from these rulings and request your confirmation by wire, collect, that when individual dies after March 1, 1913, leaving property, all gains or losses on subsequent sales thereof should be computed from value at date of death, not date of his acquisition, and that executor should make no return of book gains or losses up to date of death. Also that on transfer of property in question by his executor to legatee or to trustee under will or from one trustee to succeeding trustee no tax is due though there be book gain at date of such transfer. (Telegram to the Commissioner of Internal Revenue from Ropes, Gray, Boyden and Perkins of Boston, dated January 31, 1917.) (*Answer.*) When individual dies after March 1, 1913, leaving property, all gains or losses on subsequent sales should be computed on basis of appraised value at date of death and executors should not make return of book gains or losses either up to date of death or on transfer of property to legatee or to trustee under will or from one trustee to succeeding trustee, the appraised value at date of death remaining as basis for all subsequent realization of losses or gains in cash. (Telegram to Ropes, Gray, Boyden and Perkins, Boston, Mass., signed by Commissioner W. H. Osborn, and dated February 3, 1917.) [Read ¶935.]

1184 Taxability of Income Accrued to Decedent Dying after March 1, 1913, but Before October 3, 1913.—The appended decision [Feb. 8, 1917] of the Circuit Court of Appeals, Second Circuit, in the case of Nicholas F. Brady, et al. *v.* Charles W. Anderson, collector of internal revenue, is published for the information of internal-revenue officers and others concerned. The United States Supreme Court on May 21, 1917, refused to grant a writ of certiorari in this case. (T. D. 2494, June 2, 1917.)

United States Circuit Court of Appeals, for the Second Circuit.
(240 Fed. 665)

WARD, Circuit Judge:

This is an action against the Collector of Internal Revenue by the executors of
1185 Anthony N. Brady, deceased, to recover taxes assessed by the Commissioner of Internal Revenue and paid by them under protest upon income received by Brady during his lifetime before the income tax act of October 3, 1913, imposing a tax, had been passed.

The Sixteenth Amendment, by virtue of which the statute was enacted, was ratified
1186 February 28, 1913, and the Supreme Court has for that reason held that Congress had power to make it retroactive to March 1, 1913. Brushaber v. Union Pacific R. R. Co., 240 U. S. 1, 20 [¶2685].

Anthony N. Brady died July 22, 1913, and his executors, in accordance with the
1187 requirement of the Commissioner of Internal Revenue, made a return of the income received by him between March 1, when the act went into effect, and July 22, 1913, when he died. The Commissioner assessed a tax of $61,654.72.

The case having come on for trial before Grubb, J., and each side having moved
1188 for the direction of a verdict, he directed a verdict for the defendant. This is a writ of error to the judgment entered thereon.

The questions presented are purely of law, involving only the construction of
1189 the statute. We confine ourselves to the consideration of the provisions relating to citizens and residents of the United States.

1190 Section II of the act reads as follows:

"A. Subdivision 1. That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing for all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided; and a like tax shall be assessed levied, collected and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere.

* * * * * * * * * * *

D. The said tax shall be computed upon the remainder of said net income of each person subject thereto, accruing during each preceding calendar year ending December thirty-first: Provided, however, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for. On or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, a true and accurate return, under oath or affirmation shall be made by each person of lawful age, except as hereinafter provided, subject to the tax imposed by this section, and having a net income of $3,000 or over for the taxable year, to the collector of internal revenue for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources and from the total thereof, deducting the aggregate items or expenses and allowance herein authorized; guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals. * * *

* * * * * * * * * * *

E. * * * Nothing in this section shall be construed to release a taxable person from liability for income tax, nor shall any contract entered into after this Act takes effect be valid in regard to any Federal income tax imposed upon a person liable to such payment. * * *

The provisions of this section relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

* * * * * * * * * * * *

G. (a) That the normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation, joint-stock company or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerships; but if organized, authorized, or existing under the laws of any foreign country, then upon the amount of net income accruing from business transacted, and capital invested within the United States during such year. * * *

* * * * * * * * * * * *

1191 The plaintiffs contend that the tax is against persons who are citizens or residents of the United States.

1192 The Government contends that the tax is upon the property and not upon the persons, which was the view taken by the trial judge.

1193 The plaintiffs argue that as Brady, having died July 22, was neither a citizen nor a resident of the United States October 3, 1913, at the time the act was passed its language does not authorize collection of any tax upon income received by him. On the other hand, the Government says that as the tax is upon the property, it makes no difference whether Brady was living or dead at that time.

In our opinion the tax is against citizens and residents of the United States per-
1194 sonally. They are chargeable in respect to income received by them. The statement that the tax is upon this income does not create an obligation *in rem*. It is only a way of saying that the owner is taxable with reference to the income. Taxable persons are spoken of throughout the act.

The effect of making the act retroactive is, in our opinion, to apply it to Brady
1195 exactly as if it had been enacted March 1, 1913, and as, by reason of his death, he cannot make a return, his executors, into whose hands his estate has come, must do so. The judgment is affirmed. (240 Fed. 665.) [T. D. 2494, June 2, 1917.]

1196 Law ¶241. **Return by Fiduciary when Acting for an Individual.**—(1) [The fiduciary shall make under oath a return for the individual for whom he acts] "if the net income of such individual is $1,000 or over if single or if married and not living with hus-

band or wife or $2,000 or over if married and living with husband or wife, or" [For guardians, other fiduciaries and agents acting as attorneys-in-fact, read at ¶1158.] [¶3019.]

1197 Fiduciaries are required to make returns of income on Income Tax Form 1041 whenever the interest of any beneficiary in the net income of an estate or trust for which the fiduciary acts is $1,000 or over for an unmarried beneficiary, and in case there are married beneficiaries, then a return will be required whenever the interest of any such married beneficiary is $2,000 or over. (Art. 27, ¶186, Reg. 33, Rev., Jan. 2, 1918.)

1198 In reply you are advised that fiduciaries come within the provisions of section 28, added to the Act of September 8, 1916, by Section 1211 of the War Revenue Act of October 3, 1917, and will be required to file the return of information as provided therein, and will be required to file a return on Form 1041 as heretofore in each case whether the amount paid to any one beneficiary equals $1,000 or $2,000 according to the marital status of the beneficiary. Where there are several beneficiaries of an estate, the lowest exemption to which any one beneficiary is entitled would determine the liability of the fiduciary for filing a return. The return should clearly state the name and address of each beneficiary and the amount of income paid to each.

1199 There is no liability on the part of the fiduciary to deduct and withhold any tax from income shown by this return, except where the beneficiary is a nonresident alien individual as to the United States, in which case he will deduct and withhold a normal tax of [8]%, and the distributive share of citizen or resident beneficiaries shall be accounted for and the entire tax will be collected on their personal returns. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated November 27, 1917.)

1200 In reply you are advised that the reason for the reference to married and unmarried in connection with the making of returns in section 3 (b) of the Act of October 3, 1917, in the case of the estate income is that guardians or trustees are given the privilege, Section 7, Act of September 8, 1916, as amended, of claiming the exemption to which their wards or beneficiaries are entitled, so that in the case of the trust, the income of which is distributed annually, the return required of the trustee would be in accordance with the specific exemption to which the respective beneficiaries would be entitled, except where more that one beneficiary is to be shown on the same return, and in that case the lowest exemption would govern for the purpose of making returns. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated November 23, 1917.)

Returns by Fiduciaries of Information at the Source.—[Read at ¶1314.]

1201 **Return in Cases of More than One Trust or Estate.**—A fiduciary acting for a beneficiary in more than one estate or trust is required to account for each estate separately when the amounts are such as to require the filing of a return, and also a return of information. (Art. 29, ¶204, Reg. 33, Rev., Jan. 2, 1918.)

1202 Where, in the case of more than one trust, the creator of the trust in each instance, is the same person and the trustee in each instance is the same, the trustee should make a single return on Form No. 1041 for all of the trusts in his hands, notwithstanding the fact that they arise from different instruments. When a trustee holds trusts created by different persons for the benefit of the same beneficiary, he should make return for each trust separately on Form No. 1041. This ruling is based on the identity of the creator and the identity of the trustee of the various trusts, and not upon the identity of the beneficiary. (Art. 29, ¶202, Reg. 33, Rev., Jan. 2, 1918.)

1203 **Return of Undistributed Distributable Income.**— * * * fiduciaries having control of any portion of income accruing during the year to known beneficiaries, other than Trust Estates as provided in T. D. 2231, but not distributed or paid to the beneficiaries during the year, shall, in rendering their annual return (Form 1041), give the name and address of each of said beneficiaries having a distributive interest in said income, and shall furnish all the information called for in such returns. * * * (T. D. 2289, Jan. 28, 1916.)

1204 This office is in receipt of your letter of January 17, 1916, as follows: "Is a return of any kind to be made for the year 1915 by a fiduciary under the following case: In a trust estate where the beneficiaries and their respective interests in the income therefrom are definitely known and where the interest of each of the beneficiaries in the income of the trust since the beginning thereof in March, 1915, until December 31, 1915, is less than [$1,000] or (excluding income from bonds issued by a state or any political subdivision thereof) and where the total income of the trust for that period is less than [$5,000], irrespective of the fact whether all of said income of the trust remains undistributed in the hands of the fiduciary or has been distributed in part to the beneficiaries?" [Answer.]

Your question is answered in the negative. Procedure will be in accordance with T. D. 2289. (Letter to The Corporation Trust Company, signed by the Acting Commissioner David A. Gates, and dated February 3, 1916.)

1205 Must trustee make income tax return where amount * * * is less than [$1,000] dollars for any beneficiary, all beneficiaries being ascertained and entitled to all income, and at end of year total income undistributed, including dividends, is less than twenty thousand dollars? [Answer.] Your telegram January 17. No fiduciary return required where all income of trust estate accrues to known beneficiaries and no beneficiary's interest * * * [$1,000] dollars or over for calendar year [unless a beneficiary be a nonresident alien].

1206 Does Treasury Decision 2231 [¶1233 and ¶1234] apply to trusts where beneficiary is known and is entitled to all income or does it apply only to trusts where the beneficiaries are either undetermined or are not entitled to receive all income as in a trust for accumulation? [Answer.] Treasury Decision 2231 applies only where beneficiaries or their interest in income not determined at end of year or where trust provides for accumulation. (From a letter to Commissioner Osborn from W. F. Taylor of Carter, Ledyard & Milburn, New York, dated January 17, 1916, and from the Department's telegram in answer thereto dated February 1, 1916, and signed by Acting Commissioner David A. Gates.)

1207 Law ¶184. **Income Received by a Fiduciary, which is Distributable to Beneficiaries is Taxable.**—[The taxes imposed by sections 210 and 211 apply to] "(4) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant to be held or distributed as the court may direct." [¶2991]

1208 Law ¶192. **Beneficiaries Liable on Distributable Income.**—"(d) In cases under paragraph (4) [¶1207] of subdivision (a),"

1209 Law ¶193. **Legatees Liable on Amount Properly Paid or Credited to Them During Period of Administration.**—"and in the case of any income of an estate during the period of administration or settlement permitted by subdivision (c) [¶1249] to be deducted from the net income upon which tax is to be paid by the fiduciary,"

1210 Law ¶194. **Distributable Income to be Included in Beneficiary's Return.**—"the tax shall not be paid by the fiduciary, but there shall be included in computing the net income of each beneficiary his distributive share, whether distributed or not, of the net income of the estate or trust for the taxable year, or,"

1211 Law ¶195. "if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year upon the basis of which such beneficiary's net income is computed."

[In connection with the above read at ¶2991.]

1212 Unless the beneficiary is under some disability which requires the fiduciary to act, the beneficiary will make his own return and account for the tax upon his entire net income. (T. D. 2090, Dec. 14, 1914.)

1213 **When Fiduciary May Make Return for Beneficiary.**—As each such fiduciary acts solely in behalf of the beneficiaries of the trust, the annual return required in such cases has reference only to the income accruing and payable through said fiduciary, and not to the income of the beneficiary derived from other sources. If, however, such fiduciary is legally authorized to act for such beneficiary as agent or attorney in fact, [read at ¶1158] he may in such case also make for the beneficiary the personal annual return required by law. (Art. 72, Reg. 33, Jan. 5, 1914.)

1214 Law ¶196. **Credits Allowed to Beneficiaries when Making Returns Including Distributable Income.**—"In such cases the beneficiary shall, for the purpose of the normal tax, be allowed as credits in addition to the credits allowed to him under section 216 [¶1124], his proportionate share of such amounts specified in subdivisions (a) [dividends, ¶1125] and (b) [interest on Government bonds included in gross income [¶1127] of section 216 as are received by the estate or trust." [¶2994]

Their Proportionate Shares of the Net Loss Suffered by an Estate or Trust During Certain Taxable Years May be Deducted by Beneficiaries.—[Read at ¶1921.]

1215 Law ¶242. **Return by Fiduciary when Acting for an Estate or Trust.**—[That every fiduciary (except receivers appointed by authority of law in possession of

part only of the property of an individual) shall make under oath a return for the individual [¶1196], estate or trust for which he acts] "(2) if the net income of such estate or trust is $1,000 or over or if any beneficiary of such estate or trust is a nonresident alien," [¶3019]

1216 Fiduciaries * * * will be required to make returns of income * * * in all cases of return under section 2 (b), Act of September 8, 1916, as amended, when the income of the estate or trust, as an entity, is $1,000 or over. This return will be on Form 1040 or 1040 A. (Art 27, ¶185, Reg. 33, Rev. Jan. 2, 1918.)

1217 Law ¶180. **Income of Estates and Trusts is Taxable.**—"Sec. 219. (a) That the tax imposed by sections 210 [normal tax on individuals] and 211 [surtax] shall apply to the income of estates or of any kind of property held in trust, including—" [Read at ¶2994.]

1218 Law ¶181. **Income Received by Estate During Period of Settlement is Taxable.**—"(1) Income received by estates of deceased persons during the period of administration or settlement of the estate;"

1219 Under the provisions of section 2 (b) it is held that estates during the period of administration have but one beneficiary, and that beneficiary is the estate. Therefore a return on Form 1040 or 1040A, subject to all the deductions and exemption, shall be made by the executor or administrator for such beneficiary and the entire tax paid thereon. (Art. 29, ¶193, Reg. 33, Rev., Jan. 2, 1918.)

1220 Executors and administrators whose duty consists of administering on an estate for the purposes of its distribution to heirs or legatees are, during the period of such administration, held to stand in the stead of their principal, and under the provisions of section 2 (b), Act of September 8, 1916, are required to make returns of income for the estate and to pay the tax shown by such return to be due. (Art. 4, ¶24, Reg. 33, Rev., Jan. 2, 1918.)

1221 Where, during the period of administration, an executor converts the estate in his possession as such executor into money for the purpose of settling the estate and closing the administration and in which conversion a profit is realized which with other income exceeds $1,000, a return of income should be made by the executor covering the period of administration in which should be included all gains, profits, and income of the estate during such period, and he should pay the tax found by such return to be due. The income of the estate being thus freed of income-tax liability may thereafter be dealt with without further regard to income-tax requirements. (Art. 29, ¶195, Reg. 33, Rev., Jan. 2, 1918.)

1222 Where income under the provisions of section 2 (b), Act of September 8, 1916, is accounted for in a return of income by the executor, administrator, or trustee, as the case may be, and the tax shall have been assessed and paid under such return, such income is thereby freed of all tax liability and may be thereafter dealt with without further regard to the provisions of the income-tax law. (Art. 29, ¶192, Reg. 33, Rev., Jan. 2, 1918.)

1223 **Final Return on Final Accounting.**—Administrators or executors may, immediately after their discharge, upon final accounting, file with the proper collector of internal revenue a return of income for the income of the estate for the calendar year in which the administration was closed, and should pay the tax found by such return to be due immediately upon receipt of notice and demand for the amount of such tax. There should be attached to this return a copy of the certificate, under seal, setting forth the fact of final accounting and discharge of the executor or administrator. The liability for return is fixed by the law as of December 31, and return will be required in accordance with the provisions of law existing on that date.

1224 An ancillary administrator is held to be merely an agent of the domiciliary administrator and should transmit to him all information as to income of the estate received by the ancillary administrator, to the end that the original administrator may make a return covering the entire income of the estate. (Art. 26, ¶179-180, Reg. 33, Rev., Jan. 2, 1918.)

1225 **Liability for Payment of Tax Attaches to the Person of the Executor or Administrator.**—Liability for payment of income tax *attaches to the person* of an *executor* or *administrator* for income tax up to and including the date of his discharge, regardless of the fact that the time in which claim is made and filed against the estate has expired or where, prior to distribution and discharge, the executor or administrator had notice of his obligations to the Federal Government or where he failed to exercise due diligence in determining whether or not such obligations existed. (Art. 29, ¶197, Reg. 33, Rev., Jan. 2, 1918.)

1226 **Inspection by Beneficiaries of Returns Made by Fiduciaries.**—An executor acts for his principal and not for the beneficiaries of the estate of his principal. Beneficiaries are not entitled, as such, to an inspection of returns of income filed by such executor. (Art. 26, ¶184, Reg. 33, Rev., Jan. 2, 1918.)

1227 Law ¶182. **Income Accumulated in Trust is Taxable.**—[¶1217. The taxes imposed by sections 210 and 211 apply to] "(2) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;" [¶2991.]

1228 Estates.—(b) The income of estates, in process of administration or in trust for accumulation of income, is taxed as for an unmarried person. (Art. 3, ¶7, Reg. 33, Rev., Jan. 2, 1918.)

1229 Stock dividends paid from earnings or profits accumulated after March 1, 1913, received by a fiduciary and retained as an accretion to the estate under the *terms* of the *will* or *trust* are held to be income to the estate and taxable as such to the estate.

1230 Income accumulated in trust for unascertained persons or persons with contingent interests is held to be income accruing to the estate and is taxable to the estate. (Art. 29, ¶206–207, Reg. 33, Rev., Jan. 2, 1918.)

1231 Law ¶183. **Income Held for Future Distribution under Terms of Will or Trust is Taxable.**—[¶1217. The taxes imposed by sections 210 and 211 apply to] "(3) Income held for future distribution under the terms of the will or trust; and" [¶2991.]

1232 Income held for future distribution under the terms of the will or trust shall be likewise taxed except when returned by the beneficiary for the purpose of the tax. (Art. 29, ¶208, Reg. 33, Rev., Jan. 2, 1918.)

1233 The income of trust estates, as any other income is subject to the income tax. * * * Any part of the annual income of trust estates not distributed or distributable to known beneficiaries—see T. D. 2289, (¶1203) becomes an entity and, as such, is liable to the normal and additional tax, which must be paid by the fiduciary. When the beneficiary is not *in esse* and the income of the estate is retained by the fiduciary such income will be taxable to the estate as for an individual and the fiduciary will pay the tax both normal and additional. * * * When the gross net income not distributed and remaining in the hands of a fiduciary is less than [$5,000], the estate will be listed as a beneficiary and only the normal income tax will be assessable and such tax will be paid by the fiduciary. When the gross net income not distributed and remaining in the hands of a fiduciary exceeds [$5,000], such income is subject to both the normal and additional tax and the estate will be listed as a beneficiary and both the normal and additional tax will be paid by the fiduciary. (T. D. 2231, July 26, 1915.)

1234 **Returns of Income Accruing to Trust Estates.**—Fiduciaries shall, on or before March [15] of each year, make and render a return, in form prescribed by the Commissioner of Internal Revenue [Form 1041] of the income coming into their custody or control and management from each trust estate when the annual interest of any beneficiary in the income of said trust estate subject to the normal tax is in excess of [$1,000 or $2,000], and also when the undistributed income of the estate (as an entity or beneficiary in and of itself for tax purposes), shall exceed [$1,000]. In such cases the estate shall be reported as a beneficiary for the undistributed income. (T. D. 2231, July 26, 1915.)

1235 **Dividends Declared from Surplus Earned and Accumulated During Life of Decedent and Subsequent to March 1, 1913, are Taxable in Hands of Executor in Year Received.**—This office is in receipt of your letter of October 11, 1915, requesting, as attorneys for ————, executor of the estate of A————, a reconsideration by this office of its holding September 25, 1915, in letter to the Collector for the Second District of New York in matter of assessment of tax upon certain dividends received by the executor as trustee in September and December, 1913, not included in his return as income.

1236 It appears that the dividends in question were declared and paid in 1913 from the surplus of a bank, accumulated during a period of several years.* The dividends amounted to $20,000 and $13,666.68 was excluded from the return under the theory and belief that the amount so excluded was capital and did not have the status of income for the purposes of the income tax for the reason that this proportion of the dividends was earned by the bank, a ———— corporation, prior to the death of ————, a stockholder of the bank. You cite, as authority, Matter of Osborne, 209 N. Y. App., 450.

1237 You are advised that the case has been reviewed and the decision of this office, September 25, 1915, is affirmed.

1238 The dividends in question, being a distribution in 1913 of corporate profits, had the status of income for income tax purposes to the stockholders of the corporation.*

*For taxable status of dividends under present law see ¶770.

1239 The principle of decision in Matter of Osborne, 209 N. Y. App., 450, is that so far as possible (in the absence of testamentary direction to the contrary), the corpus of a trust fund in which life tenants and remaindermen are interested should be kept at the value it possessed when the fund was originally created. The court did not attempt to change the rule that a dividend, however evidenced and paid, declared and paid from corporate surplus, has the status of income, but only that in holding evenly the balance between life tenants and remaindermen "the court should look into the fact, circumstances and nature of the transaction and determine the nature of the dividend and the rights of the contending parties according to justice and equity."

Trustees are required to make return and pay tax for the persons for whom they act.

1240 Where they act for and make distribution within a taxable period to an individual they are required to make return * * * . Where they act for an individual not determined, or for an individual not entitled to receive within the taxable period, they are held to have the status, for the purposes of the income tax, not only as a fiduciary but also that of agency for such beneficiary, and as such fiduciary and agent are required to make return and pay the tax upon the amount received and held. For the purpose of the income tax the effect of accumulation in the hands of a trustee is held to be the equivalent of distribution in the sum of the accumulation.

In this case the fiduciary received within the taxable period, retained and did not

1241 distribute, the sum of $39,154.50. All this sum had the status of "gains, profits and income" under the Act of October 3, 1913, and, therefore, under the provisions of T. D. 2231 [paragraph 1233], is taxable to the trustee. [Letter to Bowers & Sands, New York, N. Y., signed by Deputy Commissioner L. F. Speer, and dated October 19, 1915.)

1242 **Obligation of a Receiver for an Individual to Make Return and Pay Tax.**—[Read the provision at ¶1168.] This office is in receipt of your letter, February 1, 1917, further with reference to the question submitted in your letter of January 22, 1917, as to the duty of a receiver under interlocutory orders of the United States District Court to make return for and pay tax on the income received by him on funds which he holds in trust as receiver under an appointment as aforesaid. ¶Under the second case, stated in Section 2 (b), Act of September 8, 1916—"The income of * * * any kind of property held in trust * * * (except when the income is returned for the purpose of the tax by the beneficiary)" is subject to the normal and additional tax, the tax to be assessed to the trustee. Under the provisions of Section 7 (a) of the Act the receiver will be permitted to deduct, as an exemption, [$1,000] in his return. This return is to be made on Income Tax Form 1040. ¶The receiver is indemnified by the Act against the claims or demands of every beneficiary for all payments of taxes which he shall be required to make under the provisions of the Act of September 8, 1916, and he shall have credit for the amount of such payments against the beneficiary or principal in any accounting which he makes as such receiver. ¶The income being thus freed of tax liability imposed by the statute, it may thereafter be dealt with by the receiver without further regard to the requirements of the tax statute. (Letter to William Beverly Winslow, New York, N. Y., signed by Deputy Commissioner L. F. Speer, and dated February 9, 1917.)

1243 Receivers who, as officers of a court, stand in the stead of some principal are required to account for income tax as the principal would have been required to account. (Art. 26, ¶181, Reg. 33, Rev., Jan. 2, 1918.)

1244 Law ¶189. **Taxes to be Paid by Fiduciary on Income (1) Received During Period of Settlement, (2) Accumulated in Trust, and (3) Held for Future Distribution under Terms of Will or Trust.**—"(c) In cases under paragraph (1) [¶1218], (2) [¶1227], or (3) [¶1231] of subdivision (a) the tax shall be imposed upon the net income of the estate of trust and shall be paid by the fiduciary," [¶2991.]

1245 **Deed of Trust to be Irrevocable.**—A deed of trust must be absolute so far as the conveyance of title is concerned and irrevocable by the donor, otherwise the income from the property in question will accrue to the donor and must be accounted for by him. (Art. 29, ¶194, Reg. 33, Rev., Jan. 2, 1918.)

1246 **Fiduciaries are Indemnified.**—[There is no definite provision to this effect in the present law as there was in the old law, except as applied to amounts withheld at the source, for which see ¶729, noting the use of the word "section."] All fiduciaries are indemnified against the claims or demands of every beneficiary for all payments of taxes which they shall be required to make under the provisions of this title and they shall have credit for such payments in any accounting which they make as such fiduciaries. [Art. 29, ¶209, Reg. 33, Rev., Jan. 2, 1918.)

1247 Law ¶186. **How Net Income of an Estate or Trust is to be Computed.**—"The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212 [¶754]," [¶2991.]

1248 Law ¶187. **Additional Deduction Because of Payments Made for Religious, Charitable, Educational, etc., Purposes, Pursuant to Terms of Will or Deed of Trust.**—"except that there shall also be allowed as a deduction (in lieu of the deduction authorized by paragraph (11) [¶1102] of subdivision (a) of section 214) any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is during the taxable year paid to or permanently set aside for the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, or any corporation organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual;"

1249 Law ¶190. **Additional Deduction of Amounts Properly Paid or Credited to Legatee During Period of Administration.**—"except that in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income properly paid or credited to any legatee, heir or other beneficiary."

1250 **Other Items of Expense Deductible and not Deductible.**—Expenses of administration of an estate, such as court costs, attorney's fees, executor's commissions, etc., are chargeable against the corpus of the estate and are not allowable deductions in a return of income. (Art. 8, ¶102, Reg. 33, Rev., Jan. 2, 1918.)

1251 Referring to the difference between the expenses of administration of estates set forth as not allowable deductions in T. D. 2090 [Reg. 33, Rev. ¶1250] and the expenses itemized as allowable deductions on Form 1041, Revised [old Form], the distinction is sought to be made between such first expenses as are properly chargeable against an estate, as an entity, and such other expenses, incident to administration, as may arise from the nature of the properties and the details of business management.

1252 Among the former, T. D. 2090 cites court costs, attorneys' fees, executors' commissions [see paragraph 1255], etc., and among the latter may be cited the usual and necessary expenses of carrying on a business, including salaries, wages, rentals paid, and such repairs to business properties as do not constitute permanent improvements or betterments which increase the value of the property or estate. The former is meant to apply to expenses that reduce the estate in the administrator's hands, and the latter to legitimate expenses that reduce the income accruing to beneficiaries, but not the estate itself. (T. D. 2135, Jan. 23, 1915.)

1253 * * * The intent and purpose of this regulation is to deny to fiduciaries the right of claiming a deduction for depreciation in returns for the income tax of beneficiaries when in fact no depreciation reserve is established nor is authorized to be established but the amount claimed as a deduction for depreciation is actually paid to the beneficiary as income. * * * .

1254 Nothing in this regulation shall be construed to deny the right of trustees to make deductions from gross income for expenses actually incurred for repairs and such other necessary expenses, other than betterments, as may be required to preserve the corpus of the estate in accordance with the facts, actual application or reservation of the necessary amounts or proper provisions of the trust, the requirements of law or the order of a court of competent jurisdiction. (T. D. 2267, Nov. 5, 1915.)

1255 In all cases it should be definitely ascertained by a fiduciary whether, under state laws, the terms of a will or by the decree of a court, the commissions in question are deductible from the corpus of the estate or from the income accruing to the beneficiaries of the estate, and his action in the matter should be guided entirely by the facts thus ascertained. If the commissions are properly deductible from the corpus of the estate they should not be included in the fiduciary return on office Form 1041, Revised, as allowable deductions against the interests of the beneficiaries. If, on the other hand, the commissions, are to be deducted from the income of the estate distributable among the beneficiaries the amount should be entered on Form 1041, Revised, as a legitimate and necessary expense, properly deductible from the income of the estate. (Extract from letter to The Corporation Trust Company, signed by Acting Commissioner David A. Gates, and dated March 2, 1915.)

1256 **Inheritance Taxes are Not Deductible.**—This office is in receipt of your letter of February 4, 1916, and in reply you are advised that a collateral inheritance tax levied under the laws of the State of New York, being, as it is, a charge against the corpus of the estate, does not constitute such an item as can be allowed as a deduction in computing income tax liability to either the estate or a beneficiary thereof. (Letter to Charles J. McDermott, 2 Rector Street, New York, N. Y., signed by Deputy Commissioner G. E. Fletcher, and dated February 10, 1916.)

1257 **Depreciation Deduction in Return of Trust Estates.**—In the case of a trust estate where the terms of the will or trust or the decree of a court of competent jurisdiction provides for keeping the corpus of the estate intact, and where physical property forming a part of the corpus of such estate has suffered depreciation through its employment in business, a deduction from gross income for the purpose of caring for this depreciation, where the deduction is applied or held by the fiduciary for making good such depreciation, may be claimed by the fiduciary in his return of income. Fiduciaries should set forth in connection with their returns the provision of law, trust, or decree requiring such depreciation deduction where any exists or when actual depreciation occurs, the amount thereof, and that the same has been or will be preserved and applied as such. All amounts paid by fiduciaries to beneficiaries of trust estates from the income of such trust estates, whether from reserves or otherwise, are held to be distributions of income and will be treated for income-tax purposes in accordance with the provisions of law and regulations applicable to income of such beneficiaries. (Art. 29, ¶199, Reg. 33, Rev., Jan. 2, 1918.)

1258 Law ¶191. **Credits Allowed to Estate or Trust for Normal Tax.**—"In such cases the estate or trust shall, for the purpose of the normal tax, be allowed the same credits as are allowed to single persons under Section 216 [¶1124]."

1259 Law ¶243. **Contents of Return by Fiduciaries.**—"stating specifically the items of the gross income and the deductions and credits allowed by this title."

1260 Law ¶188. **Beneficiaries' Distributive Shares to be Listed.**—"and in cases under paragraph (4) of subdivision (a) of this section the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made."
[See "Returns by Fiduciaries," ¶3019.]

1261 **How Fiduciaries Should Enter on Form 1041 the Undistributed Distributable Income at the Close of the Year to Known Beneficiaries.**—[This paragraph refers to Form 1041 as it was prior to the passage of the Act of September 8, 1916.] This office is in receipt of your letter of February 15, 1916, in which you state: "In making up returns of annual net income for fiduciaries we note that line 5 of Form 1041 (revised) recites 'amount of income of the estate or trust * * * and which was *paid* to beneficiaries of the estate or trust as listed in columns 1 and 3 below.' Also the columns on page 3 recite '*Paid* to beneficiaries,' etc. Invariably fiduciaries have undistributed income on December 31st and it seems impossible to make returns on Form 1041 (revised) without making some change in the wording." [Answer.] You ask how the listing on page 1 of the return form should be made. The name of the beneficiary should be entered twice. Opposite one such entry should be placed the amount actually paid and opposite the other the amount retained. (Letter to Curtis, Mallet-Prevost & Colt, 30 Broad Street, New York, N. Y., signed by Deputy Commissioner L. F. Speer, and dated February 18, 1916.)

1262 **Returns by Fiduciaries and Beneficiaries of Dividends Received 1917 which are Apportionable to Prior Years.**—First Question: Should share of each beneficiary in dividends accumulated prior to nineteen seventeen as stated in Schedule E on page three of form ten forty-one be listed in table of distribution of net income on page four of ten forty-one? (Answer.) Share of each beneficiary in dividends taxable at rates applicable to years prior to nineteen seventeen should be shown on page four Form 1041 in table of distribution.

1263 Second Question: Should such shares in earlier dividends be included in total share of each beneficiary in net income in determining whether trustee must file Form 1041? (Answer.) Share in such dividends must be included in total share of each beneficiary in net income in determining trustee's liability for return Form 1041.

1264 Third Question: In computing net income of individual beneficiary to determine whether he should file return, should amount of dividends accumulated in years prior to nineteen seventeen be included? First sentence of instructions numbered one on page one of Form 1040 seems to imply they should be excluded in figuring net income. (Answer.) Such dividends must be taken into consideration in computing individual's net income for purpose determining liability for return Form 1040. (Telegram from Hutchins & Wheeler, Boston, Mass., and the telegram in reply thereto signed by Commissioner Daniel C. Roper, and dated March 8, 1918.)
[Re above: Certain 1918 stock dividends are to be allocated to prior years.]

1265 Law ¶244 **Return by One of Two or More Joint Fiduciaries.**—"Under such regulations as the Commissioner with the approval of the Secretary may prescribe, a return made by one of two or more joint fiduciaries and filed in the office of the collector of the district where such fiduciary resides shall be sufficient compliance with the above requirement."

1266 A return by one of two or more joint fiduciaries in the form prescribed filed in the district in which such fiduciary resides shall be a sufficient compliance with the requirement for fiduciary return. (Art. 29, ¶188, Reg. 33, Rev., Jan. 2, 1918.)

1267 Law ¶246. **Law Provisions Applicable to Individuals Apply to Fiduciaries.**—"Fiduciaries required to make returns under this Act shall be subject to all the provisions of this Act which apply to individuals."

1268 Fiduciaries will be subject to all the provisions of law which apply to individuals who are required to make returns of income. A fiduciary making return shall make oath that he has sufficient knowledge of the affairs of the person, trust, or estate for whom or which he acts to enable him to make such return, and that the same is, to the best of his knowledge and belief, true and correct. (Art. 29, ¶188, Reg. 33, Rev., Jan. 2, 1918.)

General Law Provisions and Applicable Regulations Relative to Returns.—[Read beginning at ¶1434.]

[For "Partnerships and Personal Service Corporations" in Reg. No. 45, read at ¶2978.]

1269 Law ¶168. **Common-Law Partnerships Are Not Taxable As Such.**—"Sec. 218, (a) That individuals carrying on business in partnership shall be liable for income tax only in their individual capacity." [¶2978]

1270 Partnerships, as such, are exempt from income tax on their net income. (Art. 3, ¶11, Reg. 33, Rev., Jan. 2, 1918.)

1271 Common-law partnerships are not associations within the meaning of income tax law * * * . (Art. 63, ¶306, Reg. 33, Rev., Jan. 2, 1918.)

1272 **Hawaiian Partnerships Composed of Corporations.**—[Such partnerships, permitted under the laws of Hawaii, were held to be partnerships for Federal income tax purposes rather than joint-stock associations in Haiku Sugar Company, et al., vs. Johnstone. Circuit Court of Appeals, Ninth Circuit. April 1, 1918 (249 Fed. 103). However, "joint-stock associations" are no longer included in the definition of "corporations." The wording now is "associations" and "joint-stock companies."]

1273 **Private Banks as Partnerships.**—Private banks which do not have this formal organization [paragraph 1732] but which transact business, not in the name of the bank, but in the name of the individuals who compose the firm, as John Smith & Co., are held to be co-partnerships * * * . In such cases the individuals who compose the firm, if they have net incomes in excess of [$1,000 or $2,000] will be required to make individual returns on Form 1040, accounting for therein their respective incomes arising and accruing from the earnings of the bank. (Mimeograph letter No. 1271 to Collectors, Oct. 19, 1915.)

1274 **Limited Partnerships of the Pennsylvania Type Are Considered As Associations and Liable to All the Provisions of Law Applicable to Corporations.**—Section 10 (a) of the Income Tax Act of September 8, 1916, as amended, provides for a tax upon the net income of "every corporation, joint-stock company or association, or insurance company, organized in the United States, no matter how created or organized, but not including partnerships." Section 4 of the War Income Tax Act of October 3, 1917, and Section 407 of the Capital Stock Tax Act of September 8, 1916, contain language similar in effect. Section 200 of the War Excess-Profits Tax Act of October 3, 1917, specifying that when used therein "the term 'corporation' includes joint-stock companies or associations and insurance companies," provides for a tax "upon the income of every corporation, partnership, or individual."

1275 Article 62 of the Income Tax Regulations classes limited partnerships as corporations for the purpose of the income tax and requires income from the earnings of such partnerships to be treated like dividends on corporate stock. Article 2 of the Excess-Profits Tax Regulations extends the term "corporation" to include limited partnerships.

1276 So far as limited partnerships of the type of partnerships with limited liability or partnership associations authorized by the statutes of Pennsylvania and of a few other States are concerned, no reason exists for changing the regulations. Such so-called limited partnerships, offering opportunity for limiting the liability of all the members, providing for the transferability of partnership shares, and capable of holding real estate and bringing suit in the common name, are more truly corporations or joint-stock companies than partnerships.

But the regulations require revision with respect to limited partnerships of the
1277 type authorized by the statutes of New York and of most of the States. Such limited partnerships, which cannot limit the liability of the general partners, although the special partners enjoy limited liability so long as they observe the statutory conditions, which are dissolved by the death or attempted transfer of the interest of a general partner, and which cannot take real estate or sue in the partnership name, are so like common law partnerships as to render inadvisable the differentiation hitherto existing in the regulations.

The same considerations apply to the classification of limited partnerships for the
1278 purpose of the capital stock tax. It is immaterial that partnerships with limited liability of the Pennsylvania type may not issue stock. They have capital stock and the interests of the members are shares within the meaning of the statute, stock certificates being mere evidences of ownership.

Therefore, for the purpose of the income tax, the war income tax, the excess-profits
1279 tax and capital stock tax, limited partnerships of the Pennsylvania type of partnerships with limited liability are corporations or joint-stock companies, and limited partnerships of the New York type are partnerships. Article 62 of the Income Tax Regulations and Article 2 of the Excess-Profits Tax Regulations are modified accordingly. However, in doubtful cases limited partnerships will be treated as corporations unless they submit satisfactory proof that they are not in effect so organized. (T. D. 2711, May 9, 1918.) [¶3077 and ¶3078.]

1280 Law ¶169. **Distributive Share of Partnership's Net Income, Whether Distributed or Not, To Be Accounted For By Each Partner.**—"There shall be included in computing the net income of each partner his distributive share, whether distributed or not [¶1289], of the net income of the partnership for the taxable year, or," [¶2978.]

1281 Law ¶170. **Partner's Accounting Period Differing From That of the Partnersh.p.**—"if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed." [¶2978.]

1282 It is held that the income of a partnership accrues to the individual partner at the time his distributive interest is determined. In the returns of income made by individuals * * * there should be included such incomes accruing from the business of partnerships for the business years of the partnerships as may have been definitely ascertained by means of a book balance, whether distributed or not. Members of partnerships * * * should include in their returns of income their interest in partnership profits ascertained at the end of the business year falling within the * * * year for which the individual return is being rendered. (Art. 4, ¶48, Reg. 33, Rev., Jan. 2, 1918.)

1283 The partners are required to include their respective shares of partnership income (whether distributed or not) in the returns required of each partner. (Art. 3, ¶11, Reg. 33, Rev., Jan. 2, 1918.)

1284 Partnerships as such are required to * * * render a correct return of the earnings, profits, and income of the partnership, except income exempt from tax under section 4 of the income-tax law, setting forth the item of gross income and the deductions and credits allowed by law as for an individual, citizen, or resident alien, and the names and addresses of the individuals who would be entitled to the net earnings, profits, and income, if distributed. In computing its profits, for the purpose of the income tax and return as aforesaid, a partnership shall not deduct premiums on life-insurance policies covering the lives of members of the partnership, its employees, or those financially interested in the business or trade conducted by the partnership or otherwise. Individuals entitled to share in partnership net income are required to include in their returns of income their respective shares of such partnership net income, whether distributed or not. In reporting their share of partnership net income the partners will exclude such part thereof, as may have been received by the partnership from sources exempt from tax under provisions of section 4, act of September 8, 1916, as amended, and which shall have been included by the partnership in its statement of net income distributed to the partners. The partners shall include in their returns of income their proportionate share of partnership net income derived from dividends, but the amount of such dividends so received shall be allowed as a credit for the purpose of computing the normal income tax. (Art. 30, ¶211, Reg. 33, Rev., Jan. 2, 1918.)

1285 **Partners Should Return Their Respective Interests in the Firm's Accounts Receivable.**—This office acknowledges receipt of your letter of February 23, 1916, in which you request to be advised upon the following statement of facts: "A firm of lawyers

has, during 1915, entered upon its books legal charges to clients amounting to a certain sum. Part of these accounts have been paid. The remainder constitute debts due the partnership. Should income tax returns of individual partners be based upon the cash receipts of the firm from such accounts (whether distributed or not), or upon the total charges thus entered upon the books?" [Answer.] In reply you are informed that the distributive interests of the partners in the firm's net income, as shown by the books when closed, should be reported in their returns, and not their distributive interests in so much of the net income as represented actual cash receipts. (Letter to Green, Hinckley & Allen, Providence, R. I., signed by Deputy Commissioner L. F. Speer, and dated Feb. 28, 1916.)

1286 **Insurance Premiums.**—Insurance premiums paid on life-insurance policies covering the lives of officers, employees, or those financially interested in any business conducted as a partnership or by an individual shall not be deducted in computing the net income of such individual or in computing the profits of such partnership for the purpose of paragraph (e) of section 8 of the act of September 8, 1916, as amended. (Art. 30, ¶212, Reg. 33, Rev., Jan. 2, 1918.)

1287 **Net Losses Suffered By Partnerships.**—Where the result of partnership operation is a net loss, the loss will be divisible between the partners in the same proportion as net income would have been divisible, and may be used by the individual partners in their returns of income. (Art. 30, ¶213, Reg. 33, Rev., Jan. 2, 1918.)

Benefit of the Special "Net Loss" Provision Accrues to Members of a Partnership.—[Read at ¶1921.]

1288 **Undistributed Distributable Interests Once Taxed Are Not Taxed Again When Distributed.**—Undivided annual net profits of partnerships thus returned by the individual members thereof, and tax paid thereon, shall not, when said profits are actually distributed and paid to such members, be again included in their annual return as a part of their gross income. (Art. 14, Reg. 33, Jan. 5, 1914.]

1289 Law ¶171. **Credits Allowed Members of Partnerships for Normal Tax Purposes.**—"The partner shall, for the purpose of the normal tax, be allowed as credits, in addition to the credits allowed to him under section 216 [¶1124], his proportionate share of such amounts specified in subdivisions [dividends, ¶1125] (a) and (b) [United States bond interest included in gross income, ¶1127] of section 216 as are received by the partnership."

1290 Law ¶172. **Taxable Year Embracing Parts of Two Calendar Years for which the Rates Differ.**—"(b) If a fiscal year of a partnership ends during a calendar year for which the rates of tax differ from those for the preceding calendar year, then"

1291 Law ¶173. "(1) the rates for such preceding calendar year shall apply to an amount of each partner's share of such partnership net income equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year, and"

1292 Law ¶174. "(2) the rates for the calendar year during which such fiscal year ends shall apply to the remainder."
[In connection with the above read at ¶2979.]

1293 If the fiscal year of a partnership (other than the calendar year) ends in a calendar year for which there is a rate of tax, different from the rate for the preceding calendar year, for the purpose of the income tax, each partner's share of partnership profits shall be divided in the proportion of the different calendar years composing said fiscal year and the rate of tax for the respective calendar years shall apply to that part of such profits as thus falls within said calendar years. (Art. 31, ¶214, Reg. 33., Rev., Jan. 2, 1918.)

Special for 1917-1918 and 1918-1919 Partnership Fiscal Years, ¶1674.

1294 Law ¶175. **Credit to a Member of a Partnership Whose Fiscal Year Ends in 1918, for his Proportionate Share of any Excess Profits Tax Imposed on the Firm for the 1917 Portion of such Fiscal Year.**—"(c) In the case of an individual member of a partnership which makes return for a fiscal year beginning in 1917 and ending in 1918, his proportionate share of any excess profits tax imposed upon the partnership under the Revenue Act of 1917 with respect to that part of such fiscal year falling in 1917, shall, for the purpose of determining the tax imposed by this title, be credited against that portion of the net income embraced in his personal return for the taxable year 1918 to which the rates for 1917 apply." [¶2978]

1295 Law ¶176. **Manner of Computing Net Income by Partnerships to Determine Taxable Distributive Interests.**—"(d) The net income of the partnership shall be computed in the same manner and on the same basis as provided in section 212, [¶754] except that the deduction provided in paragraph (11) [contributes, ¶1102] of subdivision (a) of section 214 shall not be allowed."

1296 **Credit to Members on Account of Non-Deductible Donations Made by a Partnership.**—Any donation allowed as a business expense of the partnership would of course not be deductible by individual members of the partnership in their personal income tax returns. Donations made by the partnership but not allowable as deductions by it may be prorated among the individual members of the partnership for the purpose of their individual income tax returns, as contributions or gifts, subject to the limitations of Section 5 of the Act of September 8, 1916, subdivision a, clause ninth, added by Section 1201 of the Act of October 3, 1917. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated May 23, 1918.)

1297 **Amount Received by an Employee of a Partnership Under a Participation of Profits Agreement is Deductible by the Partnership as an Expense.**—This office acknowledges the receipt of your letter of June 26, 1916, reading, in part as follows: "A partnership agrees with an expert to take charge of one of its departments upon a participation of profits basis; that is, the expert serves without salary and his compensation is in the form of 20% of the net profits of his department at the end of the year. May the amount represented by the 20% be deducted as an expense to the partnership in determining the amount of taxable income to the actual members of the partnership?" (Answer) It appears from your statement of facts that the relationship existing between the partnership and the "expert" is merely that of employer and employee and, such being the case, the office holds that the amount of compensation paid to the individual constitutes an item of business expense to the partnership and may be so considered in computing the amount of taxable income accruing to the partnership members. (Letter to The Corporation Trust Company, signed by Acting Commissioner David A. Gates, and dated June 30, 1916.)

1298 Law ¶238. **Returns by Partnerships.** "Sec. 224. That every partnership shall make a return for each taxable [¶477] year," [¶3018.]

1299 A partnership shall have the privilege of fixing and making return on the basis of a fiscal year the same as provided for corporations by section 13 (a) and (b), Act of September 8, 1916, as amended. * * * [Read "Comment" at ¶1486.] (Art. 31, ¶214, Reg. 33, Rev., Jan. 2, 1918.)

1300 Any partnership may at its option designate the last day of any month as the close of its fiscal year. In each case where the partnership's fiscal year differs from the calendar year it shall, not less than 30 days prior to March 1, give notice in writing to the collector of internal revenue of the district in which its principal place of business is located that the day it has thus designated is the closing day of its fiscal year. [Read "Comment" at ¶1486.] (Art. 31, ¶215, Reg. 33, Rev., Jan. 2, 1918.)

1301 Law ¶238. **Return of Gross Income and Deductions.**—"stating specifically the items of its gross income and the deductions allowed by this title [¶1295] and"

1302 Law ¶238. **Return to Disclose Names and Addresses of all Members.**—"shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and"

1303 Law ¶238. **Return to Show Distributive Share of Each Member.**—"the amount of the distributive share of each indiviWual [¶1280]."

1304 Law ¶238. **Return to be Sworn to by One of the Partners.**—"The return shall be sworn to [¶1451] by any one of the partners."

General Law Provisions and Applicable Regulations Relative to Returns.—[Read beginning at ¶1434.]

1305 Law ¶177. **Personal Service Corporations.**—"(e) Personal service corporations shall not be subject to taxation under this title but the individual stockholders thereof shall be taxed in the same manner as the members of partnerships." [¶2981.]

1306 Law ¶178. "All the provisions of this title relating to partnerships and the members [¶1269, et seq.] thereof shall so far as practicable apply to personal service corporations and the stockholders thereof:"

INFORMATION AT THE SOURCE.

1307 Law ¶179. **Amounts Distributed or Distributable by Personal Service Corporations.**—"*Provided*, That for the purpose of this subdivision amounts distributed by a personal service corporation during its taxable year shall be accounted for by the distributees; and any portion of the net income remaining undistributed at the close of its taxable year shall be accounted for by the stockholders of such corporation at the close of its taxable year in proportion to their respective shares." [Read at "Dividends" ¶770.]

Personal Service Corporations to Make Annual Returns.—Read at ¶1398 and ¶2981.

1308 Law ¶23. **"Personal Service Corporation" Defined.**—"The term 'personal service corporation' means a corporation whose income is to be ascribed primarily to the activities of the principal owners or stockholders who are themselves regularly engaged in the active conduct of the affairs of the corporation and in which capital (whether invested or borrowed) is not a material income-producing factor;"

1309 Law ¶24. "but does not include any foreign corporation,"

1310 Law ¶25. "nor any corporation 50 per centum or more of whose gross income consists either"

1311 Law ¶26. (1) of gains, profits, or income derived from trading as a principal, or"

1312 Law ¶27. "(2) of gains, profits, commissions, or other income, derived from a government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive;"
[In connection with the above read at ¶3084.]

1313 Law ¶13. **"Government Contract" Defined.**—"The term 'Government contract' means (a) a contract made with the United States, or with any department, bureau, officer, commission, board, or agency, under the United States and acting in its behalf, or with any agency controlled by any of the above if the contract is for the benefit of the United States, or (b) a sub-contract made with a contractor performing such a contract if the products or services to be furnished under the subcontract are for the benefit of the United States. The term 'Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive' when applied to a contract of the kind referred to in clause (a) of this paragraph, includes all such contracts which, although entered into during such period, were originally not enforceable, but which have been or may become enforceable by reason of subsequent validation in pursuance of law;"

1314 Law ¶391. **Returns of Information at Source.**—"Sec. 256. That all individuals, corporations and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers,"

1315 Law ¶392. "making payment to another individual, corporation, or partnership,"

1316 Law ¶393 "of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income"

1317 Law ¶394. "(other than payments described in sections 254 [dividends ¶1393] and 255 [profits paid to customers by brokers, ¶1396],"

1318 Law ¶395. "of $1,000 or more in any taxable year,"

1319 Law ¶396. "or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for,"

1320 Returns of information will not be required from disbursing officers of payments made to sailors, soldiers, or civilian employees of the United States Government, the records in these cases being available to the Treasury Department at any time. (T. D. 2670, March 11, 1918.)

1321 Law ¶397. "shall [¶1314] render a true and accurate return [¶1572] to the Commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by him with the approval of the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment."
[In connection with the above read at ¶3054.]

1322 In lieu of the withholding of normal tax at the source, heretofore required, from incomes paid to citizens or residents of the United States, there shall hereafter be furnished "returns of information" in accordance with the provisions of Section 1211 [Sec. 256, ¶1314] of the War Revenue Act of October 3, 1917, on forms for that purpose which will be furnished you in due time for distribution throughout your district. (Mimeograph letter to Collectors, No. 1663, November 1, 1917.)

1323 Every person, corporation, partnership, association, and insurance company, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, and employers, making payment to another person, corporation, partnership, association, or insurance company of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable gains, profits, and income (other than payments [of dividends, ¶1393, and of profits to customers by brokers, ¶1396] of [$1,000] or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments. are hereby authorized and required to render a true and accurate return to the Commissioner of Internal Revenue, on the form prescribed for that purpose (Form 1099), setting forth the amount of such gains, profits, and income and the name and address of the recipients of such income. (Art. 34, ¶233, Reg. 33, Rev., Jan. 2, 1918.) [¶3056.]

1324 This Section makes it mandatory for all persons, corporations, partnerships, and associations or insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, and employers, making payments of [$1,000] or more of income to another person, corporation, partnership, association, or insurance company, in the [taxable] year [1918], to file information return of such payments in accordance with rules and regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, or become liable for a penalty of not * * * more than $1,000. [If neglect is willful, then "guilty of a misdemeanor and shall be fined not more than $10,000 or imprisoned for not more than one year, or both, together with costs of prosecution, ¶1572.] (T. D. 2670, March 11, 1918.) [¶3056.]

1325 **Tax Exempt Organizations to Furnish Information at the Source.**—If it is held that the corporation itself is exempt from the income and excess profits taxes, it is not, however, exempt from the withholding requirements nor from furnishing information in accordance with the provisions of the Act of October 3, 1917. (T. D. 2693, April 8, 1918.)

1326 **Forms for Making Returns.**—To this end certificate form No. 1099 and letter of transmittal form No. 1096 have been provided for use in reporting such payments. (T. D. 2670, March 11, 1918.)

1327 **Letter of Transmittal.**—Returns of information for the preceding calendar year shall be filed with the Commissioner of Internal Revenue on or before March 1 [March 15] of each year, accompanied by a letter of transmittal, under oath (Form 1096), which will show the number of returns filed and the aggregate amount represented by the payments. (Art. 34, ¶234, Reg. 33, Rev., Jan. 2, 1918.)

1328 **Payments Made Which do not Require Returns of Information.**—Under the above authority the following instructions are issued for the guidance of all concerned: payments made which do not require reports of information.

1329 Payments made to corporations, associations, or insurance companies, for the year 1917. [Note the qualifying clause "for the year 1917."] [For 1918 see ¶3056.]

1330 Bills paid for merchandise, telegrams, telephone, freight, storage, and similar charges.

1331 Bills paid to employees for board and lodging while traveling under orders or when employee is employed on a salary basis.

1332 Payments of premiums made to insurance companies for annual protection. Annuities representing return of corpus or capital.

1333 Fees to lawyers, doctors, and similar payments, aggregating less than [$1,000] for the year.

1334 Interest accrued on bank deposits, before it has been passed to the credit of the individual depositor.

1335 Salary, wages, and other compensations for services rendered in December, 1917, but paid in 1918, unless the amount was fully due and passed to the credit of the individual in December, 1917.

1336 Payments of rent made to real estate agents. (But agents must repay payments to landlord, if the same amounts to [$1,000] or more during 1917.)

1337 Payments made to employees in factories where the brass check or number system was in use during 1917, and a record of sufficient detail does not exist and cannot be obtained because employees are no longer in the employ of the company. However, in all such cases an accounting system must be installed that will enable such employers to keep an accurate check so that full information can be given in the future. [1918 is presumably "the future".]

1338 In the case of an employer having a large number of employees who are moved from place to place as the exigencies of the service require, and who consequently has no complete record of annual payments to them at any one place, the salary of two representative months may be taken to establish a fair monthly wage, and unless yearly payment based on this estimate in the case of an empolyee amounts to $800 or more no return of payments to such employee is required for 1917. [Note the "1917"; also that returns are now required if payment is "of $1,000 or more."]

1339 Payments made by branches of business houses located in foreign countries to alien employees serving in foreign countries need not be reported. (T. D. 2670, March 11, 1918.)

1340 Form 1099 should not be used to report payments for advertising, freight, cartage, fire insurance premiums, and discounts paid banks. (Telegram to Kennedy M. Thompson, New York, N. Y., signed by Commissioner Daniel C. Roper, and dated February 5, 1918.)

1341 **Returns of Information Covering Payments made to Insurance Agents and Agencies.**—Replying to your letter of February 26, 1918, relative to the reporting on Forms 1096 and 1099 of commissions paid to insurance agents during 1917, you are advised that if the commissions are paid to soliciting agents for personal service in securing insurance contracts, the amount must be reported.

1342 If, however, the agent conducts a branch office, or is employed by an insurance company under a contract that makes it necessary to bear the expenses of the branch office, and all payments received are intended to cover such expenses, it is not then necessary that reports on Forms 1096 and 1099 be filed. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper and dated March 28, 1918.)

1343 **Living Quarters in Addition to Cash Compensation.**—Where a person received a cash compensation for services rendered and in addition thereto living quarters, the value to such person of the quarters furnished constitutes income subject to tax. A return under Section 28 is required in each case where the cash compensation received plus the value of living quarters furnished equals or exceeds [$1,000] for a tax year. (Art. 34, ¶235, Reg. 33, Rev., Jan. 2, 1918.)

1344 "Living quarters" referred to in paragraph 235 [¶1343], Regulations No. 33 (revised) are quarters furnished for the benefit and convenience of employees only. When living quarters, such as camps, are furnished for the convenience of the employer only, the cost need not be added to the compensation of the employee. (T. D. 2670, March 11, 1918.)

1345 **Return of Information at the Source Required of Employer if Wage Payments to Employee Aggregate $1,000 or More for the Year Irrespective of the Basis for Such Wage Payments.**—Receipt is acknowledged of your letter dated October 15, 1917, requesting that you be advised whether the provisions of Section 28 added to the Act of September 8, 1916, by Section 1211, Act of October 3, 1917, apply to employers of workmen paid by the hour or by the piece, stating in this connection as follows: "One of our clients employs some three thousand workmen who are almost all on piece work on an hourly basis and a large number of them will be paid more than $800 during the year. Their wages, however, are not *fixed* as would be a weekly or monthly salary, payments to them being variable from week to week and even from day to day." (Answer.) In reply you are advised that in accordance with the provisions of the law as stated in the Section referred to above each person, corporation, partnership, etc., is authorized and required to render a true and accurate return to the Commissioner of Internal Revenue setting forth the amount of salary or compensation and the name and address of each employee who is paid [$1,000] or more during the year 1917, and subsequent tax years. The liability for such return attaches in all cases of payments of salary or compensation amounting to [$1,000] or more during the year, without regard to the basis of payment of the period during the year in which it was earned and for which it was paid. (Letter to Palmer and Serles, New York, N. Y., signed by Commissioner Daniel C. Roper, and dated October 25, 1917.)

1346 **Salaries Due to Non-Resident Aliens for Services Rendered Outside the United States Need not be Reported on Form 1099.**—In reply to your letter of February 6, 1918, the receipt of which was acknowledged March 7, 1918, you are advised that salaries paid to a non-resident alien for services performed outside of the United States are not required to be reported on Forms 1096 and 1099 * * * [see ¶563]. (Letter to Kenefick, Cooke, Mitchell & Bass, Buffalo, N. Y. signed by Deputy Commissioner L. F. Speer, and dated March 27, 1918.) [¶3058.]

1347 **Branch Offices and Subcontractors.**—Heads of branch offices and sub-contractors employing labor and keeping the only complete record of payments should file the returns of information in regard to such payments direct with the Commissioner of Internal Revenue, Sorting Division, Washington, D. C. When the record is kept of payments at both the main office and the branch office the return should be filed by the main office. (T. D. 2670, March 11, 1918.)

1348 **Returns of Information at the Source by Fiduciaries.**—In reply you are advised that fiduciaries come within the provisions of Section 28, added to the Act of September 8, 1916, by Section 1211 of the War Revenue of October 3, 1917, and will be required to file the return of information as provided therein. (Part of letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated November 27, 1917.)

1349 Section 2 (b) of the income tax law of September 8, 1916, and the regulations prescribed by this office, require that the beneficiary shall report as income his share of the distributable income of the trust estate received by the fiduciary during the year. On Form 1099 should be shown the beneficiary's share of the distributable income of the trust estate regardless of whether or not this is actually paid over to the beneficiary during the year. There should not be included on Form 1099 any part of the dividends received by the trust estate. It is only where the beneficiary's share of the distributable income of the trust estate from sources other than dividends is [$1,000] or more that a return on Form 1099 is required. If the entire trust estate consists of shares of stock in corporations subject to the income tax, no Form 1099 is to be filed. (Letter to F. W. Denio, Old Colony Trust Co., Boston, Mass., signed by Commissioner Daniel C. Roper, and dated March 5, 1918.)

1350 Law ¶398. **Returns of Information of Payments of Corporate Obligation Interest.**—"Such returns *may** be required, regardless of amounts, (1) in the case of payments of interest upon bonds, mortgages, deeds of trust, or other similar obligations of corporations, and"

***Comment:** [The Revenue Act of 1916 as amended by the Revenue Act of 1917 provided "that such returns *shall* be required."] [Required for 1918, ¶3057.]

1351 "Art. 35. Such returns of information *shall* be required, regardless of amount, in the case of payments of interest upon bonds, mortgages, or deeds of trust or other similar obligations of domestic or resident corporations, joint-stock companies, associations, and insurance companies, * * * . The original ownership certificates, when duly filed, shall constitute and be treated as returns of information." (Part of paragraph 1 i. e. ¶236, of Art. 35, Reg. 33, Rev., Jan. 2, 1918, as amended by T. D. 2759, Oct. 2, 1918.)

1352 Law ¶399. **Returns of Information Concerning the Collection of Foreign Items.**—"(2) [Such returns *may** be required, regardless of amounts] in the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by individuals, corporations, or partnerships, undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange [¶1378]."

***Comment:** [The Revenue Act of 1916 as amended by the Revenue Act of 1917 provided "that such returns *shall* be required."] [Required for 1918, ¶3059.]

1353 Article 35, regulations No. 33, Revised, as amended by Treasury Decision 2716, is hereby amended to read as follows:

"Art. 35. Such returns of information shall be required, regardless of amount, in the case of payments of interest upon bonds, mortgages, or deeds of trust or other similar

obligations of domestic or resident corporations, joint-stock companies, associations, and insurance companies, and in the case of foreign items. The original ownership certificates when duly filed, shall constitute and be treated as returns of information.

1354 "The term 'foreign item,' as used in this Article, means any dividend upon the stock of a foreign corporation, or any item of interest upon the bonds of foreign countries or foreign corporations, whether or not such dividend or interest is paid in the United States, or by check drawn on a domestic bank. The term 'foreign corporation' as used in this Article, means one not organized and existing under the laws of the United States or of any State or Territory thereof, or of the District of Columbia, Porto Rico, or the Philippine Islands.

1355 "Wherever a foreign country or foreign corporation issuing bonds has appointed a paying agent in this country, charged with the duty of paying the interest upon such bonds, such paying agent shall be the source of information. If such foreign country or foreign corporation has no such agent then the last bank or collecting agent in this country shall be the source of information. In the case of dividends on the stock of a foreign corporation, the first bank or collecting agent accepting such item for collection shall be the source of information.

1356 "Where bonds of foreign countries, or bonds or stocks of foreign corporations, are owned by citizens or residents of the United States, individual or fiduciary, or by domestic or resident corporations, joint-stock companies, associations, insurance companies or partnerships, ownership certificate 1001A shall be executed by the actual owner, or by his duly authorized agent, when presenting the item for collection, whether such item is a dividend or an interest payment, except in the case of a foreign country ora foreign corporation having a paying agent in this country and issuing bonds which contain a 'tax-free' covenant clause. In such cases the paying agent is required to withhold the normal tax upon the interest on such bonds; and ownership certificate, Form 1000, properly modified to show that the debtor has a paying agent in this country, should be used, unless the owner desires to claim exemption; in which case Form 1001A should be filed.

1357 "Where bonds of foreign countries, or bonds or stocks of foreign corporations, are owned by nonresident alien individuals, or foreign corporations, associations or partnerships, ownership certificate, Form 1071, Revised, shall be used for and on behalf of such owners by any responsible bank or banker, either foreign or domestic. (Paragraphs 1 to 5 of Art. 35, Reg. 33, Rev., Jan. 2, 1918, as amended by T. D. 2759, Oct. 2, 1918.)

1358 "Your telegrams October 10. The words "resident corporation" paragraph 4 [¶1356], Treasury Decision 2759, referred to in your telegram, govern in the collection of foreign items by a foreign corporation having an office or place of business in United States and ownership certificate Form 1001A, revised, is required. The words "foreign corporation" paragraph 5 [¶1357], Treasury Decision 2759, referred to in your telegram, govern only in collection of foreign items by a foreign corporation not having an office or place of business in United States and ownership certificate Form 1071, revised April 20, 1916, is required. Article 43, Regulations 33, revised, not changed by Treasury Decision 2759 except [¶654] in collecting interest from resident foreign corporations, bondholders will be required to use ownership certificates Form 1001A, revised, or 1071, revised, according to status of owner except as otherwise provided in paragraph 4, Treasury Decision 2759. The words "paying agent" as used in this Treasury Decision are not to be interpreted as meaning "office or paying agent." The mere maintenance of an office or paying agency in United States for the payment of dividends on stock or interest on bonds does not constitute a foreign corporation a resident of United States within the meaning of this Treasury Decision. (Telegram to the First National Bank, Cleveland, Ohio, signed by Commissioner Daniel C. Roper, and dated October 14, 1918.)

1359 "Foreign items shall not be accepted for collection by any bank or collecting agent so licensed [for license requirements see ¶1378] unless endorsed as hereinafter provided or accompanied by proper ownership certificates (Form 1001–A, Form 1000, properly modified as outlined above, or Form 1071, Revised, as the case may be), giving *all* information called for by such certificate. In all cases in which the first licensed bank or collecting agent is the source of information, such licensee shall detach the ownership certificate, and indorse on the item the words "Certificate detached and information furnished," adding his name and address. Where an interest coupon is received for collection, the ownership certificate shall accompany the coupon to the paying agent in this country, or, if there is no such agent, then to the last bank or collecting agent handling the item in this country. When more than one coupon of the same maturity is received at one time from the same owner and from the same issue of bonds, a single certificate may be used for all of such coupons. When foreign items have been indorsed as above prescribed, the certificates shall be detached and forwarded to the Commissioner of Internal Revenue (Sorting Divis-

ion), Washington, D. C., on or before the 20th day of the month following that during which the items were accepted, accompanied by a letter of transmittal, showing the number of certificates, and the aggregate amount of foreign items disclosed thereon.

"In all cases in which the paying agent or the last bank or collecting agent in this
1360 country is the source of information, the ownership certificate shall accompany the coupon to such agent or source of information, who shall forward the ownership certificate to the Commissioner of Internal Revenue, in the manner provided where such duty is upon the licensee. *Provided, however,* that, in case ownerhip certificate, Form 1000, is used as provided above, the paying agent shall make return on Form 1012 as provided in the Regulations. [¶702] (Paragraphs 7 and 8 of Art. 35, Reg. 35, Rev., Jan. 2, 1918, as amended by T. D. 2759, Oct. 2. 1918.)

1361 In order that these requirements may be complied with, certificates (Form 1001–A and Form 1071, Revised) will be provided by the Government and furnished to collectors of internal revenue for distribution to the public. (T. D. 2759, Oct. 2, 1918.)

1362 Certificate Form 1071 Revised will be printed on yellow paper in the form that follows:

1363 [Certificate Form 1001–A, Revised, will be printed on white paper, green ink, in the form that follows:]

1364 These certificates will be in size 8 by 3½ inches, and will be printed to read from left to right along the 8-inch dimension.

1365 The paper to be used will correspond in weight and texture to white writing paper, 21 by 32, about 40 pounds to the ream of 500 sheets.

1366 They will be printed by the Government and furnished without cost.

1367 Banks or bankers desiring to furnish their own certificates may do so, but the certificates so printed must conform in size to those prescribed and be printed in similar type upon the same color, shade, and weight of paper as used by the Government.

Sample certificates showing size of type and color of paper can be secured from
1368 the Commissioner of Internal Revenue, Washington, D. C. (T. D. 2325, April 24, 1916.)

1369 **Form 1071, Modified, to be Filed by Nonresident Alien with Coupon from Foreign Bond When Presented Direct to Paying Agent in the United States.**—This office acknowledges the receipt of your letter of June 7, 1916, requesting to be advised what form of income tax certificate should be executed by a nonresident alien to accompany interest coupons detached from bonds issued by a foreign Government when such coupons are payable in the United States. In reply you are advised that if the nonresident alien bondowner does not present his coupons for payment or collection through a bank or banker, but direct to a paying agent in the United States, such coupons should be accompanied by exemption certificates, Form 1071, Revised, so modified as to show personal ownership of the bonds. (Letter to The Corporation Trust Company, signed by Deputy Commissioner L. F. Speer, and dated June 13, 1916.)

1370 **Dividends Paid by Foreign Corporation Deriving its Entire Income From Business Done Wholly Within the United States.**—Dividends declared and paid by a foreign corporation which derives its entire income from business done wholly within the United States and pays under the provisions of the Federal income-tax law, a tax upon its net income should be treated in the same manner as dividends from domestic corporations. (T. D. 2090 Dec. 14, 1914.)

1371 Law ¶400. **Name and Address of Recipient of Income to be Furnished on Request.**—"When necessary to make effective the provisions of this section the name and address of the recipient of income shall be furnished upon demand of the individual, corporation, or partnership paying the income." [¶3062.]

1372 When the person receiving a payment falling within the provisions of law for information at the source is not the actual owner of the income received the name and address of the actual owner shall be furnished upon demand of the person, corporation, partnership or association paying the income, and in default of a compliance with such demand the payee becomes liable to a penalty. * * * [¶1572]. (Art. 36, ¶240, Reg. 33, Rev., Jan. 2, 1918.)

1373 Where no address is available the last known post office address must be given. Street and number should be given when possible.

1374 Information in regard to whether an employee is single, head of a family, or married, should be given when possible. (T. D. 2670, March 11, 1918.)

1375 Law ¶401. **Information at the Source Provisions Apply to Calendar Year 1918.**—"The provisions of this section shall apply to the calendar year 1918 and each calendar year thereafter,"

1376 Law ¶402. **Information at the Source Provisions Do Not Apply to Payments of Interest on Government Obligations.**—"but s hall not apply to the payment of interest on obligations of the United States."

1377 The requirement of law for information at the source shall not apply to the payment of interest on obligations of the United States. (Art. 37, ¶241, Reg. 33, Rev., Jan. 2, 1918.)

1378 Law ¶410. **License Required for the Collection of Foreign Items.**—"Sec. 259. That all individuals, corporations, or partnerships undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange [¶1352] shall obtain a license from the Commissioner and" [¶3068.]

1379 Banks or agents collecting foreign items are required to obtain a license from the Commissioner of Internal Revenue to engage in such business, and are subject to such regulations for the furnishing of information, as the Commissioner, with the approval of the Secretary of the Treasury, shall prescribe, and to the penalties prescribed for failure to obtain such license (Act of September 8, 1916, Section 9 (f), as amended by Act of October 3, 1917, Section 1205). (Part of Paragraph 6 of Art. 35, Reg. 33, Rev., Jan. 2, 1918, as amended by T. D. 2759, Oct. 2, 1918.)

1380 All persons, corporations, partnerships, or associations undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue. * * * (Art. 48, ¶276, Reg. 33, Rev., Jan. 2, 1918.)

1381 **Each Bank Handling a Foreign Item before it Reaches the Source of Information is Required to be Licensed.**—Receipt is acknowledged of your letter of recent date, referring to Treasury Decision 2759 [¶1355] as follows: "In instances where a foreign country or corporation has no paying agent in this country the above numbered Treasury Decision requires the last bank to be the source of information. It may be that several banks may handle a foreign item before it reaches the source of information. We inquire if each of the banks handling a foreign item before it reaches the last bank in this country must take out a license?" ¶In reply you are advised that the provision referred to is applicable only to interest coupons detached from bonds issued by a foreign government, corporation, etc. In cases where a dividend check or warrant is presented for collection, the first bank accepting the item is held to be the source of information. ¶The first bank making payment of a foreign item and the last bank in this country handling same, as well as the intermediary banks concerned in the transmission of the item between these two agencies, are required to obtain a license. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated November 28, 1918.)

1382 **Licenses Required for Branch Offices of Persons or Firms Collecting Foreign Items.**—When any person, firm, or corporation shall have branch offices and desire to collect foreign interest or dividend income through such branch offices, the application for license or licenses shall be made by the person, firm, or corporation through its principal office for its branch office or offices. Application for licenses in such cases shall be made to the collector of internal revenue for the district in which the home office is located. (Art. 57, Reg. 33, Jan. 5, 1914.)

1383 **License for Branch Office of Person or Firm Collecting Foreign Items having Branch Office, to be Issued by Collector of District where Branch is Located.**—The names and addresses of the branch offices shall be furnished to the collector in the application of the said principal, and if the requirements of the foregoing regulations have been complied with to the satisfaction of the collector, he shall certify this fact to the collector of internal revenue for the district in which the branch office is located, and the collector to whom this certification is made shall issue to such branch office a license, as in the case provided in article 55 [paragraph 1385]. (Art. 57, Reg. 33, Jan. 5, 1914.)

1384 **Application for License for the Collection of Foreign Items to be Made to Collector of Internal Revenue.**—A blank application (Form 1017) for such license may be obtained, upon request, from any collector of internal revenue. This license is issued without cost. (Part of paragraph 6 of Art. 35, Reg. 33, Rev., Jan. 2, 1918, as amended by T. D. 2759, Oct. 2, 1918.)

1385 Applications for such license (Form 1017) will be made to the collector for the district in which such business is to be carried on. Upon the acceptance of such application the collector will issue to the applicant without cost a license (Form 1010) which will continue in force until revoked or canceled. Blank forms of such license, bearing the fac-simile signature of the Commissioner of Internal Revenue, will be furnished collectors on requisition, who will in all cases countersign the same before issuing it to applicant. (Art. 55, Reg. 33, Jan. 5, 1914.)

1386 The applications for these licenses and the stubs of the licenses issued shall be retained and preserved in the offices of the collectors of internal revenue. (T. D. 1909, Nov. 28, 1913.)

1387 **Licensees for Collecting Foreign Items to Keep Open Record of all Transactions.**—All persons licensed shall keep their records in such manner as to show from whom every such item has been received, and such records shall be open at all times to the inspection of internal-revenue officers. (Art. 62, Reg. 33, Jan. 5, 1914.)

1388 **Foreign Pensions.**—License not required for collection of foreign pensions paid to resident aliens or citizens of the United States. (T. D. 2090 Dec. 14, 1914.)

1389 Law ¶411. **All Persons Collecting Foreign Items to be Subject to Regulations.**—"shall be subject to such regulations enabling the Government to obtain the information required under this title as the Commissioner, with the approval of the Secretary, shall prescribe;"

1390 * * * and shall be subject to such regulations enabling the Government to obtain the information required under this title as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe. (Art. 48, ¶276, Reg. 33, Rev., Jan. 2, 1918.)

1391 Law ¶412. **Penalty for Failure to Obtain a License for the Collection of Foreign Items and for Failure to Comply with the Regulations.**—"and whoever knowingly undertakes to collect such payments without having obtained a license therefor, or without complying with such regulations, shall be guilty of a misdemeanor and shall be fined not more than $5,000, or imprisoned for not more than one year, or both."

1392 * * * and whoever knowingly undertakes to collect such payments as aforesaid without having obtained a license therefor or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding $5,000 or imprisoned for a term not exceeding one year, or both, in the discretion of the court. (Art. 48, ¶276, Reg. 33, Rev., Jan. 2, 1918.)

1393 Law ¶389. **Returns of Information Relative to Payments of Dividends to be Rendered When Required.**—"Sec. 254. That every corporation subject to the tax imposed by this title and every personal service corporation [¶1305] shall, when required by the Commissioner, render a correct return [¶1572] duly verified under oath [¶1452], of its payments of dividends, stating the name and address of each stockholder, the numb of shares owned by him, and the amount of dividends paid to him." [¶3052.]

1394 Under the provisions of section 26 of the Act of September 8, 1916, as amended, every corporation subject to the tax imposed by this title shall, when required so to do by the Commissioner of Internal Revenue, render a correct return under oath, in which is set out the amount of dividends paid by it during the year covered by the return, whether paid in cash or its equivalent in stock; the names and addresses of its stockholders, the number of shares owned by each, the tax years in which the amounts distributed were earned, and the amounts so distributed to each stockholder, applicable to the earnings of each of such years.

1395 This return, when required, will be made upon a form prescribed for this purpose and will be forwarded direct to the office of the Commissioner of Internal Revenue within 10 days from the date of the receipt of the notice requiring such return. (Art. 237, ¶665-666, Reg. 33, Rev., Jan. 2, 1918.)

1396 Law ¶390. **Returns of Information by Brokers to be Rendered When Required.**—"Sec. 255. That every individual, corporation, or partnership doing business as a broker* shall, when required by the Commissioner, render a correct return [¶1572] duly verified under oath [¶1452], under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, showing the names of customers for whom such individual, corporation, or partnership has transacted any business, with such details

as to the profits, losses, or other information which the Commissioner may require, as to each of such customers, as will enable the Commissioner to determine whether all income tax due on profits or gains of such customers has been paid." [¶3053.]

*[Formerly applied to brokers "on any exchange or board of trade or other similar place of business."]

1397 Every person, corporation, partnership, or association doing business as a broker on any exchange or board of trade or other similar place of business, shall, upon request of the Commissioner of Internal Revenue, render a correct return under oath, on a form furnished by the Commissioner of Internal Revenue for that purpose, showing the names of customers for whom such person, corporation, partnership, or association has transacted any business, with such details as to the profits, losses, or other information as may be called for by such return form as to each of such customers. See special regulations No. 40. [Stamp tax regulations issued Nov. 30, 1917.] (Art. 33, ¶232, Reg. 33, Rev., Jan. 2, 1918.)

1398 Law ¶343. **Returns by Corporations.**—"Sec. 239. That every corporation subject to taxation under this title and every personal service corporation [¶1305] shall make a return, stating specifically the items of its gross income [¶1787] and the deductions [¶1922] and credits [2325] allowed by this title."

1399 Law ¶347. "Returns made under this section shall be subject to the provisions of sections 226 ['Returns when accounting period is changed,' ¶1479] and 228 ['Understatement in Returns,' ¶1538]."

1400 **Duty to Make Return Depends on Corporate Existence Rather Than on Income.**—The duty to make a return depends upon corporate or associational existence and not upon the receipt of income. (T. D. 2090, Dec. 14, 1914.)

1401 **When Required.**—Every corporation not specifically enumerated as exempt shall make a return of annual net income whether or not it may have for the particular year any net income, * * * (Art. 203, ¶606, Reg. 33, Rev., Jan. 2, 1918.)

1402 **Dissolved Corporations to Make Final Return.**—All corporations having an existence as such during all or any portion of a year, unless coming within the class specifically enumerated as exempt, are required to make returns. Corporations dissolved during the year and whose fiscal year coincides with the calendar year will make returns covering the period from January 1, to the date of dissolution, and such corporations having a fiscal year other than the calendar year, will make returns covering the period from the beginning of the fiscal year to the date of dissolution, and new corporations will make returns for the period from the date of organization to December 31, unless a fiscal year is designated in the proper manner, in which case returns for a period from the date of organization to the close of the fiscal year so established, in no case to exceed 12 months, will be filed. (Art. 203, ¶608, Reg. 33, Rev., Jan. 2, 1918.)

1403 **Liquidating Corporations.**—A corporation going into liquidation during any tax period may, at the time of such liquidation, prepare a "final return" covering the income received or accrued to it during the fractional part of the year during which it was engaged in business, and immediately file the same with the collector of the district in which the corporation has its principal place of business. Before distributing its assets, a dissolving corporation should reserve funds sufficient to pay any income tax assessable against it. Otherwise the tax may be collected by suit against the stockholders. (Art. 205, ¶612, Reg. 33, Rev., Jan. 2, 1918).

1404 **Change of Corporate Name.**—A mere change in name does not constitute a new corporation. If the business was continuous throughout the year, no change in management or operation other than the change in name having occurred, the return should be made covering the business transacted throughout the year, such return to be made by the corporation in the name which it bears at the end of the year, with a notation on the return to the effect that the name had been changed, giving both the old and the new names. If, however, a distinctly new corporation was organized to take over the property of the old, both corporations will be required to make separate returns covering the periods of the year during which they were respectively in charge of the business. (Art. 206, ¶613, Reg. 33, Rev., Jan. 2, 1918.)

1405 Law ¶349. **Consolidated Returns by Affiliated Corporations.**—"Sec. 240. (a) That corporations which are affiliated within the meaning of this section shall, under regulations to be prescribed by the Commissioner with the approval of the Secretary, make a consolidated return of net income and invested capital for the purposes of this title and Title III [war excess profits tax], and the taxes thereunder shall be computed and determined upon the basis of such return:"

1406 Law ¶350. "*Provided*, That there shall be taken out of such consolidated net income and invested capital, the net income and invested capital of any such affiliated corporation organized after August 1, 1914, and not successor to a then existing business, 50 per centum or more of whose gross income consists of gains, profits, commissions, or other income, derived from a Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive. In such case the corporation so taken out shall be separately assessed on the basis of its own invested capital and net income and the remainder of such affiliated group shall be assessed on the basis of the remaining consolidated invested capital and net income."

1407 Law ¶351. **In the Case of Consolidated Returns the Tax is Assessed as a Unit and then Apportioned.**—"In any case in which a tax is assessed upon the basis of a consolidated return, the total tax shall be computed in the first instance as a unit and shall then be assessed upon the respective affiliated corporations in such proportions as may be agreed upon among them, or, in the absence of any such agreement, then on the basis of the net income properly assignable to each."

1408 Law ¶352. **In the Case of Consolidated Returns One Specific Credit of $2,000 only is Allowed.**—"There shall be allowed in computing the income tax only one specific credit of $2,000 (as provided in section 236 [¶2330]); [The following is applicable to the war excess profits tax only.] in computing the war-profits credit (as provided in section 311) only one specific exemption of $3,000; and in computing the excess-profits credit (as provided in section 312) only one specific exemption of $3,000."

1409 Law ¶353. **What Corporations are Deemed to be Affiliated.**—"(b) For the purpose of this section, two or more domestic corporations shall be deemed to be affiliated"

1410 Law ¶354. "(1) if one corporation owns directly or controls through closely affiliated interests or by a nominee or nominees substantially all the stock of the other or others, or"

1411 Law ¶355. "(2) if substantially all the stock of two or more corporations is owned or controlled by the same interests."

1412 Law ¶356. **Credit for Certain Taxes Paid by a Foreign Corporation, a Majority of the Voting Stock of Which is Owned by a Domestic Corporation.**—"(c) For the purposes of section 238 [¶2332] a domestic corporation which owns a majority of the voting stock of a foreign corporation shall be deemed to have paid the same proportion of any income, war-profits and excess-profits taxes paid (but not including taxes accrued) by such foreign corporation during the taxable year to any foreign country or to any possession of the United States upon income derived from sources without the United States, which the amount of any dividends (not deductible under section 234 [¶2102]) received by such domestic corporation from such foreign corporation during the taxable year bears to the total taxable income of such foreign corporation upon or with respect to which such taxes were paid:"

1413 Law ¶357. "*Provided*, That in no such case shall the amount of the credit for such taxes exceed the amount of such dividends (not deductible under section 234 [¶2102]) received by such domestic corporation during the taxable year."

1414 **Comment.** [Consolidated returns have not heretofore been authorized by law. Under the War Excess Profits Tax law of Oct. 3, 1917, consolidated returns were called for by the Government by regulation, under certain conditions, but for excess profits tax only. The regulations issued by the Department, bearing on the subject, are reproduced here, ¶1415 to ¶1428, but must be read with the conditions outlined above fully in mind.]

1415 **When Affiliated Corporations Must Furnish Information as to Intercorporate Relations.**—For the purpose of the excess profits tax every corporation will describe in its return all its intercorporate relationships with other corporations with which it is affiliated, and will furnish such information in relation thereto as will enable the Commissioner of Internal Revenue to compute the amount of the tax properly due from each corporation on the basis of an equitable and lawful accounting.

1416 For the purpose of this regulation two or more corporations will be deemed to be affiliated (1) when one such corporation owns directly or controls through closely affiliated interests or by a nominee or nominees, all or substantially all of the stock of the other or others, or when substantially all of the stock of two or more corporations is owned by the same individual or partnership, and both or all of such corporations are engaged in the same or a closely related business; or (2) when one such corporation (a)

buys from or sells to another products or services at prices above or below the current market, thus effecting an artificial distribution of profits, or (b) in any way so arranges its financial relationships with another corporation as to assign to it a disproportionate share of net income or invested capital. (Art. 77, Reg. 41, released for publication Feb. 4, 1918.)

1417 When Affiliated Corporations May be Required to Make Consolidated Return.—Whenever necessary to more equitably determine the invested capital or taxable income, the Commissioner of Internal Revenue may require corporations classed as affiliated under article 77 to furnish a consolidated return of net income and invested capital. Where such consolidated return is required it may be made by any one or more of such corporations or by all of them acting jointly; but if such affiliated corporations, when requested to file such consolidated return, neglect or refuse to do so, the Commissioner of Internal Revenue may cause an examination of the books of all such corporations to be made and a consolidated statement to be made from such examination. In cases where consolidated returns are accepted, the total tax will be computed in the first instance as a unit upon the basis of the consolidated return and will be assessed upon the respective affiliated corporations in such proportions as may be agreed among them. If no such agreement is made the tax will be assessed upon each such corporation in accordance with the net income and invested capital properly assignable to it. (Art. 78, Reg. 41, released for publication Feb. 4, 1918.)

1418 Pursuant to Article 78 [¶1417] of Regulations 41 relative to War Excess Profits Tax, affiliated corporations, as limited and defined in paragraphs C and D below, are hereby directed to make consolidated returns for the purpose of excess profits tax. Affiliated corporations other than those falling within the provisions of paragraphs C and D may make a consolidated return only after having secured permission in writing from the Commissioner of Internal Revenue. Affiliated corporations are defined in Article 77 [¶1416] of the Regulations as follows:

"For the purpose of this regulation two or more corporations will be deemed to be affiliated (1) when one such corporation owns directly or controls through closely affiliated interests or by a nominee or nominees, all or substantially all of the stock of the other or others, or when substantially all of the stock of two or more corporations is owned by the same individual or partnership, and both or all of such corporations are engaged in the same or a closely related business; or (2) when one such corporation (a) buys from or sells to another products or services at prices above or below the current market, thus affecting an artificial distribution of profits; or (b) in any way so arranges its financial relationships with another corporation as to assign to it a disproportionate share of net income or invested capital."

A. Two or more corporations are not "affiliated" merely because all or substan-
1419 tially all of the stock therein is owned by the same corporation, individual or partnership; they must also be engaged in the same or a closely related business.

1420 B. For purposes of regulation by Public Service Commissions or similar authorities the identity of public service corporations, when not grouped into one operating unit, must be maintained, even though they are owned by the same corporation or taxpayer; and under such regulation the accounts of such public service corporations are deemed to reflect the true invested capital and income of each operating unit. Accordingly railroads, gas, electric, water and other public service corporations when operated independently and not physically connected or merged—particularly when situated in different jurisdictions and subject to regulation by public service commissions—will not be required or permitted without special permission obtained in advance, to make a consolidated return. When, however, a railroad or other public utility is owned by an industrial corporation and is operated as a plant facility or as an integral part of a group organization of affiliated corporations, and such affiliated corporations are required to file a consolidated return, the return of such railroad or other public utility shall be included therein.

C. The words "all or substantially all of the stock" as used in the above definition
1421 (Article 77) will until further notice be interpreted as meaning an ownership of 95 per cent or more of such stock by the same taxpayer during the taxable year.

1422 D. In case of affiliated corporations among which there exist contracts or trade or financial practices which arbitrarily or artificially influence or determine the amount of the invested capital or net income of one or more of the corporations so affiliated and where 95 per cent or more of the stock of the subsidiary affiliated corporations is owned by a parent or controlling corporation or by an individual or partnership, a consolidated return will be required.

E. A consolidated return shall be filed by the parent or principal corporation in
1423 the office of the collector of the district in which it has its principal office. Each of the other affiliated corporations shall file in the office of the collector of its respective district a return, entering thereon its name and address and replying to the questions in Schedule One, and to questions 1, 2, 3, 4 and 11 on page 4 of Form 1103; and stating also

(1) that the corporation is affiliated with a designated parent or principal corporation, (2) that its return is included in the consolidated return of such parent or principal corporation, and (3) the district in which the consolidated return is filed.

F. Assets of affiliated or subsidiary corporations which have to be adjusted to
1424 meet the statutory limitation prescribed by Section 207 shall be valued as of conditions existing at the dates when such assets were acquired by the respective affiliated or subsidiary corporations and not as of the date when the stock in such affiliated or subsidiary corporations was acquired by the parent or controlling corporation.

G. Affiliated corporations filing a consolidated return shall include in such return
1425 (1) a specific statement of the number or proportion of the shares in the affiliated corporations held by the parent or controlling corporation during the taxable year, and (2) a schedule showing the proportionate amount of the total tax which it is agreed among them is to be assessed upon each affiliated corporation.

H. If the Commissioner of Internal Revenue upon examination of any consolidated
1426 return finds that the tax cannot in his judgment be properly assessed upon the basis of such return, the affiliated corporations covered by such consolidated return shall, upon notice from the Commissioner of Internal Revenue, file separate returns. (T. D. 2662, March 6, 1918.)

1427 **Consolidated Returns of Affiliated Corporations with Different Fiscal Years.**—Receipt is acknowledged of your letter of March 13, in which you make the following inquiry:

"We inquire the proper method of handling consolidated returns of affiliated corporations under the Excess Profits Tax Law in cases where subsidiary corporations maintain their books on a fiscal year basis and make returns for Income Tax purposes on a fiscal year basis?"

In reply, you are advised that when required, a consolidated return must, as to
1428 both the parent or controlling corporations and its subsidiaries, be made on the basis of the fiscal year of the parent company. As to past periods, taxable income of subsidiaries must be computed to the date of the fiscal year of the parent company, and where the amounts do not disclose the profits earned as of such date, estimates will be accepted, but at the close of the succeeding year a correct accounting must be made. Invested capital must be computed as at the beginning of the parent company's fiscal period for both the parent and subsidiary company. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated March 23, 1918.)

1429 Law ¶346. **Receivers, Trustees in Bankruptcy, and Assignees Operating the Property or Business of Corporations, to make Returns.**—"In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control."

1430 Section 13, paragraph C, of this title requires receivers, trustees in bankruptcy, or assignees, who are in charge of and are operating the property and business of corporations, to make returns of annual net income and pay any income tax thereby shown to be due, regardless of what disposition, subject to the orders of the court, may be made of such income.

Notwithstanding the fact that the powers and functions of the corporation are sus-
1431 pended and that the property and business are for the time in control and custody of the receiver, trustee, or assignee, subject to the orders of the court, such receiver, trustee, or assignee stands in the place of the corporate officers and is required for the purpose of this title to perform all the duties and assume all the liabilities which would devolve upon the officers of the corporation were they in control. The income which he receives on account of the business transacted is the income of the corporation and, no matter how such income is applied, it is subject to the tax imposed by this title in so far as it exceeds the deductions or allowances authorized by law.

The receiver, trustee, or assignee acting for the corporation, is required to make a
1432 true and accurate return of annual net income covering each year or part of each year during which he is in custody and control of the business or properties and will be liable to all the penalties imposed by this title for failure to meet any of its requirements. (Art. 209, ¶621–623, Reg. 33, Rev., Jan. 2, 1918.)

1433 **No Return Required From Receiver in Charge of Part of Property Only, In Mortgage Foreclosure Proceedings.**—Reference is made to office letter of March 28, 1918, an extract from which has appeared in a recent installment of the Income Tax Service maintained by The Corporation Trust Company. In the letter in question you

were advised to the effect that a receiver of the rents and profits of premises involved in mortgage foreclosure proceedings, although the receiver of only a part of the property of the corporation, is required to file a return of annual net income on behalf of the corporation. ¶In this connection you are informed that the subject in question has been given further consideration, and it appears that the receiver in question is appointed by a court of equity in aid of its jurisdiction, and is not a receiver of all the property of the corporation, but is a common-law receiver in charge of only a part of the mortgaged property of the corporation, and is the receiver merely of the rents and profits of such mortgaged property. ¶It is held therefore that, although for the purpose of the income tax the receiver who stands in the stead of an individual or corporation must render a return of income under Section 8c and Section 13c of the Income Tax Act of September 8, 1916, as amended, the receiver of only part of the property of an individual* or corporation need not file such a return of annual net income under the Sections cited. For the purpose of the excess-profits tax the same rule extends to receivers of partnerships under Sections 206, 211 and 212 of the Title II of the Act of October 3, 1917. However, every receiver for an individual, partnership or corporation must render a return of information under Section 28 of the Income Tax Act. ¶It is respectfully requested that the information contained in this letter be given the same publicity that was given to the letter of March 28, 1918, referred to above. (Letter to Greenbaum, Wolff & Ernst, New York, N. Y., signed by Commissioner Daniel C. Roper, and dated May 1, 1918.)

***Comment.**—[Sec. 225 (¶1168) reads "That every fiduciary (*except receivers appointed by authority of law in possession of part only of the property of an individual*) shall make under oath a return * * * ."]

RETURNS IN GENERAL.

1434 Prescribed Forms.—Returns made under this act and pursuant to these instructions must be made on the forms prescribed by this department for each particular year, and which are available at the offices of collectors. (Art. 210, ¶624, Reg. 33, Rev., Jan. 2, 1918.)

1435 Forms in Use During 1918.—[Forms for making returns during 1918, were prescribed as follows:

1030 Insurance companies including mutual life and mutual marine.
1030 A Mutual insurance companies other than mutual life and mutual marine.
1031 All corporations other than railroad and insurance companies.
1040 Resident and citizen individuals.
1040 A Resident and citizen individuals for net incomes of not more than $3,000.
1040 B Nonresident alien individuals.
1041 Fiduciaries.
1065 Partnerships.
1090 Railroad corporations.]

[See list of forms at back of book.]

1436 Forms To Be Furnished.—Under the authority conferred by this title, forms of return have been prescribed in which the various items specified in the law are to be stated. Blank forms of this return will be forwarded to collectors and should be furnished to every corporation, not expressly exempted, on or before January 1 of each year, in the case of corporations making their next returns for the calendar year; on or before the first day of the next fiscal year in the case of corporations filing returns for their fiscal year. Failure on the part of any corporation, joint-stock company, association, or insurance company liable to this tax to receive a prescribed blank form will not excuse it from making the return required by law or relieve it from any penalties for failure to make the return within the prescribed time. (Art. 216, ¶631, Reg. 33, Rev. Jan. 2, 1918.)

1437 Failure to Receive Returns.—Corporations not supplied with the proper forms for making the return should make application therefor to the collector of internal revenue in whose district are located their principal places of business in ample time to have their returns prepared, verified, and filed with the collector on or before the last due date defined by the law and these regulations. (Art. 216, ¶632, Reg. 33, Rev., Jan. 2, 1918.)

1438 Failure in this respect subjects the corporation to not only [25] per cent additional tax, but to the specific penalty imposed by the law for delinquency. Each corporation should carefully prepare its return so as to fully and clearly set forth the data therein called for. Imperfect or incorrect returns will not be accepted as meeting the requirements of the law. (Art. 216, ¶633, Reg. 33, Rev., Jan. 2, 1918.)

1439 **Tentative Returns When No Forms Available.**—In the absence of a prescribed form a statement made by a corporation disclosing its gross income and deductions therefrom may be accepted as a tentative return, and if filed within the prescribed time a return so made will relieve the corporation from liability to the penalties imposed by law, provided that upon request and without delay such tentative return be substituted by a return made on the regular form. (Art. 210, ¶625, Reg. 33, Rev., Jan. 2, 1918.)

1440 **Tentative Returns By Foreign Corporations and Domestic Corporations Doing Business in Foreign Countries.**—In cases wherein foreign corporations or domestic corporations doing business in foreign countries are unable to assemble their data in time to make their returns of annual net income within the prescribed time, it will be permissible for such corporations upon a showing of this fact to file with the collector of internal revenue a tentative return in which there shall be approximated, as nearly as possible, the actual business transacted during the year.

1441 This tentative return will be substituted by a true and accurate return as soon as the necessary data to make such true and accurate return shall be available.

1442 Collectors of internal revenue are authorized to grant an extension of time not in excess of 30 days from the date when returns are due, such extension to be granted only in cases wherein the neglect to file the return within the prescribed time was due to the sickness or absence of an officer whose signature to the return was necessary. Foreign corporations or domestic corporations doing business in foreign countries can not be granted an extension of time merely for the reason that they are unable to assemble their data to make the return within the prescribed time. In all such cases, liability to the penalty of the act can be obviated only by filing a tentative return as hereinbefore indicated. (T. D. 2137, Jan. 30, 1915.) [For extension of time in the case of certain foreign corporations see ¶1510.]

1443 **Returns to Set Forth.**—[Presumably this data will be required still, although the information is no longer required in any case for the determination of the amount of interest properly deductible.]—Full amount of stock, as represented by the par value of the shares issued, is to be regarded as the paid-up capital stock, except when such stock is assessable on account of deferred payments, or payable in installments, in which case the amount actually paid on such shares will constitute the actual paid-up capital stock of the corporation. (Art. 95, Reg. 33, Jan. 5, 1914.)

1444 In making returns of annual net income for the purpose of the income tax, every corporation, in making such returns, must report under item 1 of the return form the total par value of its stock, both common and preferred, outstanding at the close of the year.

1445 Stock outstanding at the close of the year and upon the basis of which dividends are or may be paid is held to be paid-up capital stock within the meaning of the law. For this purpose it is immaterial whether the stock be paid for in cash, promissory notes, or other assets. The fact that notes are given in payment of the stock issued and that the notes have not been paid in full at the time the return is made is immaterial. (T. D. 2137, Jan. 30, 1915.)

1446 The amount of interest-bearing indebtedness of a corporation, outstanding at the close of the year, should be reported under item 2 of the return Form 1031 whether the interest accrued upon such indebtedness was actually paid within the year or not. (T. D. 2137, Jan. 30, 1910.)

1447 In the case of public-service and all other corporations it is desired by this office that the supplementary statement which forms a part of the return Form 1031, prescribed by the Secretary of the Treasury for the use of such corporations in making their returns of annual net income, shall be prepared as far as practicable in detail.

1448 It is not expected or required, however, that every particular item going to make up either gross income or the deductions therefrom shall be set out in the supplementary statement. It will be sufficient for the purpose of this office in the case of public-service corporations and other similar concerns that they supply the information by classes rather than giving the items in detail, classifying the income and expenditures in the same manner as is required as to these items by the Interstate Commerce Commission. (T. D. 2137, Jan. 30, 1915.)

1449 * * * this office does not desire to cause corporations any unnecessary trouble or expense in preparing the supplementary statement referred to and therefore if the books of the corporation which you represent are kept in such a manner as to make it very difficult to give the information in the exact form called for on the supplementary statement, a reasonable explanation in detail of the manner of arriving at gross income and expenses will be accepted. However, it is desired that this information shall be

furnished in such a manner that the returns can be intelligently audited upon receipt thereof in this office. (Extract from letter to Clinton H. Scovell & Co., signed by Commissioner W. H. Osborn, and dated Jan. 29, 1915.)

1450 Especial attention should be given to the requirement that the supplemental statements, made a part of Forms 1030 and 1031, be properly filled out in detail, and no return which is not substantially correct in this respect should be accepted. (Mimeograph letter No. 1148 to Collectors, Jan. 16, 1915.)

1451 Law ¶344. **Returns to be Made Under Oath.**—"The [corporation] return shall be sworn to by the president, vice president, or other principal officer and by the treasurer or assistant treasurer."

"Every individual shall make under oath a return," ¶1144.

"The return shall be sworn to by any one of the partners," ¶1304.

"Every fiduciary shall made under oath a return for the individual, estate or trust for which he acts," ¶1175.

1452 Law ¶440. Sec. 3165, Revised Statutes. "Every collector, deputy collector internal-revenue agent, and internal-revenue officer assigned to duty under an internal-revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal-revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken."

1453 Referring to your suggestion at a personal conference that revenue agents, inspectors, and special employees be commissioned as deputy collectors without additional compensation for the purpose of qualifying them to administer oaths, you are advised that the suggestion has been given careful consideration by this office, and it is of the opinion that there is no legal objection thereto and the plan is both practicable and desirable. Manifestly it will save much time and some expense to taxpayers, as well as result in a prompter filing of returns by persons found to be liable for taxes if such officers are in position to secure a return properly sworn to on the spot.

Collectors will therefore be authorized to issue commissions to such officers serv-
1454 ing in their districts, the commissions to expire with the regular employment of the officer so commissioned.

A copy of this letter will be published in Treasury Decisions as authority to col-
1455 lectors for such action. (T. D. 2235, Aug. 28, 1915.)

1456 In reply to your letter of the 11th instant, requesting to be advised whether in issuing commissions to officers mentioned in T. D. 2235 it should be stated that the commission is only issued for the purpose of administering oaths, you are advised that this office doubts the legality of such a limited commission, and a regular commission should be issued with a proviso that the service is to be without additional compensation, but the officers instructed that their activities as deputy collectors should be confined to the administering of oaths, as it is not necessary for such officers to collect moneys.

There is no objection to your requiring that the officers to whom such commissions
1457 are issued furnish you a bond, the same as other deputies appointed by you. (T. D. 2238, Sept. 17, 1915.)

1458 This office is in receipt of your letter of the 8th instant referring to Treasury Decision 2235 [paragraphs 1453+] authorizing Collectors to commission Revenue Agents, Inspectors and Special Employees as Deputy Collectors without additional compensation for the purpose of administering oaths, and requesting to be advised whether or not this decision can be extended to apply to clerks on the Income Tax Roll, stating that the Deputies in your office are too busy on other assignments to assist in the Income Tax Department and it would be advisable to have Income Tax Clerks empowered to administer oaths.

In reply, you are advised that this office sees no objection to the commissioning
1459 by Collectors of Income Tax or other clerks as Deputy Collectors without additional compensation under the same provisions and with the same restrictions as applied in Treasury Decision 2235 to the commissioning of the field officers named.

A copy of this letter will be published in Treasury Decisions as authority to Col-
1460 lectors for such action. (T. D. 2293, Feb. 10, 1916.)

1461 The annual return must be verified by oath * * * of the person making the same. Collectors are directed by law to require every return to be so verified by the person rendering it. The affidavit may be made before the collector for the district or before any officer authorized by law to administer oaths. (Art. 22, Reg. 33, Jan. 5, 1914.)

1462 All income-tax returns must be verified under oath or affirmation. Persons in the naval or military service of the United States may verify their returns before any official of those services authorized to administer oaths for the purposes of those services. (Art. 26, ¶175, Reg. 33, Rev., Jan. 2, 1918.)

1463 Treasury Decision 2090, Oaths, items 3 and 4, hereby amended by substituting for said items 3 and 4, the following:

For the purpose of verification of returns of income by persons in the Naval and Military service of the United States, any officer in the Naval or Military service of the United States within or without the United States, who is authorized to administer oaths under the provisions of Section 4, Act of July 27, 1892, 87 Stat. 278, providing for the administration of oaths for the purpose of Military justice and administration, or under the provisions of Act of March 4, 1917, Public 391, page 4, providing for administration of oaths for the purpose of Naval justice and administration, is hereby empowered and authorized to take the acknowledgment of such persons making returns of income.

In all such cases the certifying officer shall place under his name the official designa-
1464 tion under which he acts. (T. D. 2534, Oct. 11, 1917.)

1465 (1) A return of income rendered by an individual residing abroad may be acknowledged before any duly appointed officer of the country in which he resides, authorized to administer oaths and use an official seal. (T. D. 2090, Dec. 14, 1914.)

1466 Income-tax returns executed abroad may be attested free of charge before United States consular officers.

Where a foreign notary or other official having no seal shall act as attesting officer
1467 the authority of such attesting officer should be certified to by some judicial official or other proper officer having knowledge of the appointment and official character of the attesting officer. (Art. 26, ¶176–177, Reg. 33, Rev., Jan. 2, 1918.)

1468 (2) If a return is executed in a State before a notary who is not required by the laws of the State to use a seal, and none is used, the notary should file with the Commissioner of Internal Revenue the certificate of an officer possessing a seal, showing that he is duly commissioned and authorized to administer oaths; otherwise the certificate will not be recognized. (T. D. 2090, Dec. 14, 1914.)

1469 Replying to your letter of the 23d ultimo you are informed that affidavits to tax returns may be made before Justices of the Peace or any officer authorized by law to administer oaths.

If made before a Notary Public who is not required by the laws of the State to
1470 use a seal, and none is used, or if made before a Justice of the Peace who has no seal, certificates of the Clerk of Court as to their authority to administer oaths may be waived in your State or in any other State where such jurats are accepted in the State Courts either with or without seal, and without a certificate showing authority. (T. D. 2174, March 12, 1915.)

1471 Law ¶358. **Time for Filing Returns.**—"Sec. 241. (a) That returns of corporations shall be made at the same time as is provided in subdivision (a) of section 227 [¶1472 below]."

1472 Law ¶253. **Time for Filing Returns on Fiscal Year Basis.**—"Sec. 227. (a) That returns shall be made on or before the fifteenth day of the third month following the close of the fiscal year, or," [¶3025.]

1473 Law ¶254. **Time for Filing Return on Calendar Year Basis.**—"if the return is made on the basis of the calendar year, then the return shall be made on or before the fifteenth day of March." [¶3025.]

Comment: [All returns of net income are "for the taxable year." "Taxable year" is defined at ¶476, in general, as being coextensive with the taxpayer's annual accounting period. If the taxpayer has no accounting period, or keeps no books, his taxable year is the calendar year.]

1474 **If Return is Not Filed on Time Notice is Sent to Corporation by Collector.**—Where the required returns are not filed within the prescribed time, either by individuals or corporations, notice on Form 1045 should in each case be sent to the delinquent. (Art. 196, Reg. 33, Jan. 5, 1914.)

1475 **"Last Due Date."**—"Last due date," as used in these regulations, is construed to mean the last day upon which a return is required to be filed in accordance with the provisions of the law, or the last day of the period covered by an extension of time granted by the collector or Commissioner of Internal Revenue.—(Art. 218, ¶635, Reg. 33, Rev., Jan. 2, 1918.)

1476 **Sunday or Holidays.**—When the last due date as above defined falls on Sunday or a legal holiday the last due date for filing returns will be held to be the day following such Sunday or legal holiday and the return should be made to the collector not later than such following day, or, if placed in the mails, it should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return as here indicated is required to be filed in the office of the collector. (Art. 219, ¶636, Reg. 33, Rev., Jan. 2, 1918.)

1477 **Returns Forwarded by Mail.**—If a return is made and placed in the United States mails in due course, properly addressed, and postage paid, in ample time to reach the office of the collector or deputy collector on or before the last due date, no penalty will be held to attach should the return not be actually received by such officer until subsequent to that date. In cases wherein a question may be raised as to whether or not the return was posted in ample time to reach the collector's office on or before the date due, the envelope in which the return was transmitted should be preserved by the collector of internal revenue and forwarded to the Commissioner of Internal Revenue with the return. (Art. 220, ¶637, Reg., 33 Rev., Jan. 2, 1918.)

1478 If a return is made and placed in the United States mail, properly addressed, and postage paid, in ample time, in due course of mail, to reach the office of the collector or deputy collector on or before the last due date, no penalty will be held to attach should the return not be actually received by such officer until subsequent to that date. (Art. 52, ¶287, Reg. 33, Rev., Jan. 2, 1918.)

1479 Law ¶247. **Returns when Accounting Period is Changed. Fiscal to Calendar Year Basis.**—"Sec. 226. That if a taxpayer, with the approval of the Commissioner, changes the basis of computing net income from fiscal year to calendar year a separate return shall be made for the period between the close of the last fiscal year for which return was made and the following December thirty-first."

1480 Law ¶248. **Calendar to Fiscal Year Basis.**—"If the change is from calendar year to fiscal year, a separate return shall be made for the period between the close of the last calendar year for which return was made and the date designated as the close of the fiscal year."

1481 Law ¶249. **One Fiscal Year to Another Fiscal Year Basis.**—"If the change is from one fiscal year to another fiscal year a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year."

1482 Law ¶250. **First Return when on Fiscal Year Basis.**—"If a taxpayer making his first return for income tax keeps his accounts on the basis of a fiscal year he shall make a separate return for the period between the beginning of the calendar year in which such fiscal year ends and the end of such fiscal year."

1483 Law ¶251. **Computation of Income and Tax when Accounting Period is Changed.**—"In all of the above cases the net income shall be computed on the basis of such period for which separate return is made, and the tax shall be paid thereon at the rate for the calendar year in which such period is included;"

1484 Law ¶252. **Apportioning the Specific Personal Exemption when Accounting Period is Changed.**—"and the credits provided in subdivisions (c) [¶1128] and (d) [¶1138] of section 216 shall be reduced respectively to amounts which bear the same ratio to the full credits provided in such subdivisions as the number of months in such period bears to twelve months."

[In relation to the above read at ¶3024.]

1485 Law ¶348. **Apportioning the Specific Credit of $2,000 in the Case of Corporations When Accounting Period is Changed.**—"When return [in the case of corporations] is made under section 226 [1479] the credit provided in subdivision (c) [2330] of section 236 shall be reduced to an amount which bears the same ratio to the full credit therein provided as the number of months in the period for which such return is made bears to twelve months."

Comment.—[In reading the following regulations applying to the provisions of the law as it was heretofore it should be borne in mind (Sec. 227 (a) [1472]), "That returns shall be made on or before the fifteenth day of the third month following the close of the fiscal year, or if the return is made on the basis of the calendar year, then the return shall be made on or before the fifteenth day of March." The present law carries no provision as did the old, that application for permission to change from a calendar to a fiscal

year basis is to be made thirty days prior to the time when the return would be due to be filed on a calendar year basis. It must be remembered, also, that heretofore the privilege to make returns on other than a calendar year basis was limited to corporations and partnerships, whereas under the present law, the qualified privilege is granted to all classes of taxpayers, including individuals, ¶755.]

1486 It is noted that some corporations are apt to misunderstand the rulings of this office relative to establishing a fiscal year as the basis of its return of annual net income. In this connection you are requested not to accept a return made on any basis other than the calendar year ended December 31, unless the corporation filing such return has properly established a fiscal year. (Mimeograph letter No. 1148 to Collectors, Jan. 16, 1915.)

1487 No return purporting to be rendered for a period other than that ending with the *last day* of some month should be forwarded to this office, unless such return is "final" and made to the date that the corporation ceased business. (Mimeograph letter No. 1148, to Collectors, Jan. 16, 1915.)

1488 Fiscal Year.—Section 13 (a) of this title authorizes corporations desiring to do so to make their returns on the basis of a fiscal year other than the calendar year, provided that 30 days prior to the 1st day of March of the year in which the return would be due if made on a calendar-year basis they file a notice in writing with the collector of internal revenue, designating in such notice the last day of some month (other than December) as the close of their fiscal year. In the case of a corporation which had previously made its return on a calendar-year basis, notice designating a fiscal year having been filed as hereinbefore indicated, such corporation will, on or before March 1 next following the closing date so designated, make a return for the fractional part of the calendar year ended with the date designated as the close of the fiscal year. All returns thereafter must be made for the full fiscal year, and must be filed with the collector on or before the last day of the 60-day period next following the date designated as the close of the fiscal year. For instance, if a corporation made its return for the calendar year ended December 31, 1916, and desires thereafter to make returns as of a fiscal year ended May 31, it may, 30 days prior to March 1, 1918, file a notice in writing with the collector designating May 31 as the close of its fiscal year, whereupon, on or before March 1, 1918, it will make a return for the fractional period from January 1 to May 31, 1917. Thereafter, on or before July 30 (60 days after May 31) of each year, it will make a return for the preceding full fiscal year. (Art. 211, ¶626, Reg. 33, Rev., Jan. 2, 1918.)

1489 In the Absence of Notice, Fiscal Year Returns Not Acceptable.—A return made on the basis of a fiscal year other than the calendar year can not be accepted, unless such fiscal year shall have been established by proper notice to the collector of internal revenue of the district in which such corporation has its principal place of business, and if in the absence of such notice and designation a return is filed subsequent to the date when it was required to be filed if made on a calendar-year basis, it will be considered delinquent and the corporation will be liable to the penalty imposed for failure to file the return within the prescribed time. (Art. 203, ¶610, Reg. 33, Rev., Jan. 2, 1918.)

1490 Date of Filing and Execution.—In all cases where a fiscal year is not established as above prescribed, returns must be made on the basis of the calendar year, in which case such returns must be filed on or before the 1st day of March next succeeding such calendar year. Such returns in either case provided must be verified under oath or affirmation of its president or other principal officer, and its treasurer or assistant treasurer; that is to say, by two different persons acting in the official capacity indicated. (Art. 204, ¶611, Reg. 33, Rev., Jan. 2, 1918.)

1491 New Corporation.—In the case of a new corporation, which shall have established a fiscal year in the manner hereinbefore indicated, it may make its first and all subsequent returns on the basis of the year so established, provided that in no case shall a return cover a period greater than 12 calendar months. In the absence of a properly established fiscal year, returns must be made on the calendar-year basis. (Art. 212, ¶627, Reg. 33, Rev., Jan. 2, 1918.)

1492 A new corporation making a return for a properly established fiscal period less than 12 months, but embracing parts of two calendar years, must file its return within 60 days from the last day of the designated fiscal year. (Art. 203, ¶609, Reg. 33, Rev., Jan. 2, 1918.)

1493 Change From One Fiscal Year To Another.—In order to change the closing date of the fiscal year from the last day of one month to that of another (other than December) the corporation must at least 30 days prior to the first day of March next

following the closing date of the previously established fiscal year file with the collector, in writing, a notice designating the last day of some other month as the close of its fiscal year, in which case a return for the fractional period ending with the date last designated must be made on or before the last day of the 60-day period next following the close of such previously established fiscal year. (Art. 213, ¶628, Reg. 33, Rev., Jan. 2, 1918.)

1494 **Must Make Return For Fiscal Year.**—When a corporation has, in the manner provided by law, established a fiscal year other than the calendar year as the basis for making its return, it is bound by such action to make its returns on such basis until such fiscal year be properly changed. Failing to make its returns on the basis designated and within the prescribed time will subject the corporation to the penalties imposed by this title for delinquency. (Art. 214, ¶629, Reg. 33, Rev., Jan. 2, 1918.)

1495 If it shall appear in any case that returns have been made to the collector on the basis of a fiscal year not designated as hereinbefore indicated, the corporation making such returns will be advised that such returns can not be accepted, but must be made to cover the business of the calendar year. (Art. 215, ¶630, Reg. 33, Rev., Jan. 2, 1918.)

1496 **Change From Fiscal To Calendar Year.**—The normal period for which returns are required to be made is the calendar year and the normal due date for filing such return the 1st day of March next following December 31. If a corporation, which had previously established a fiscal year other than the calendar year as the basis for making its return, desires to establish the calendar year basis, it may do so by filing not less than 30 days prior to March 1 next following the closing date of the established fiscal year, a notice in writing with the collector, designating December 31 as the close of its year, in which case it must on or before the 1st day of the March next following file a return covering that period between the closing date of its previously established fiscal year and December 31. (Art. 217, ¶634, Reg. 33, Rev., Jan. 2, 1918.)

1497 **Assistance From Collectors in Preparing Returns.**—All Collectors of Internal Revenue who have not already done so will please arrange to inform the public, in their respective districts, through the press or other means of publicity without cost to the Government or by posting appropriate notices, that any assistance or information which may be required in connection with preparing and filing their Income Tax Returns will be gladly and promptly furnished by applying to or calling at any Internal Revenue Office.

In pursuance of the above, Collectors should assign from the present office forces,
1498 an employee or employees, as the case may require, who should be thoroughly posted on the provisions of the Income Tax law and all Treasury Decisions and Regulations in connection with same, particularly with relation to the Personal Tax and the filing of Individual Returns, to promptly furnish the public with information desired when calling at the various Internal Revenue Offices. (Letter to Collectors, Feb. 10, 1914.)

1499 A large part of the volume of correspondence coming to this office asking for information relative to making return and ascertainment of net income, etc., for the income tax, is sufficiently covered by regulations, and should be answered in the offices of collectors.

Collectors are therefore advised that letters coming to this office asking for informa-
1500 tion which should be supplied by collectors in accordance with instructions and regulations furnished them, will be referred to collectors for reply and writers of the letters advised of the reference. Collectors, upon receipt of letters referred to them by this office, will give immediate attention to the subject-matter of the inquiry, in accordance with the regulations and instructions bearing upon the same. (T. D. 1949, Feb. 14, 1914, and T. D. 1956, Feb. 14, 1914.)

1501 **Law ¶447. Extension of Time For Filing Returns May Be Granted by the Collector.**—Sec. 3176, Revised Statutes [second paragraph]. "If the failure to file a return or list is due to sickness or absence, the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper." [See ¶3026.]

1502 In ordinary cases of citizens and residents, where failure to file returns is due to sickness or absence, the Collector of Internal Revenue may in his discretion and on application therefor before expiration of 30 days from the time return should have been filed, allow such further time as he may deem proper (not exceeding 30 days from the date return should have been filed), for making and filing return. The collectors' authority in such cases is limited to 30 days. Further extension can be made by the Commissioner of Internal Revenue only and is confined to meritorious cases and upon satisfactory showing why return was not or cannot be made and filed within the extension granted by the collector. (Art. 22, ¶165, Reg. 33, Rev., Jan. 2, 1918.)

1503 When the return is not filed within the required time by reason of sickness or absence of the individual, an extension of time, not exceeding 30 days from March [15], within which to file such return may be granted by the collector, provided a written application therefor is made by the individual within the period for which such extension is desired. (Art. 23, Reg. 33, Jan. 5, 1914.)

1504 In cases wherein a corporation fails or neglects to file its return within the prescribed time, and such neglect is due to sickness or absence, the collector is authorized to grant an extension of the time within which to file the return, which extension must not exceed 30 days from the normal due date. The application for such extension must be made prior to the expiration of the period for which the extension is desired. Otherwise the return will be considered delinquent and liability to penalty will attach. (Art. 222, ¶640, Reg. 33, Rev., Jan. 2, 1918.)

1505 Absence or sickness of one or more officers, at the time the return is required to be filed, will not be accepted as a reasonable cause for failure to file the return within the prescribed time, unless it is satisfactorily shown that there were no other principal officers available and sufficiently informed as to the affairs of the corporation to make and verify the return. (Art. 223, ¶641, Reg. 33, Rev., Jan. 2, 1918.)

1506 An extension of time within which a return may be filed [granted by the collector] can in no case exceed 30 days from the date on which the return is due and can be granted only upon written application to the collector, and in case of sickness or absence of an officer whose signature to the return is required, such application to be made prior to the expiration of the period for which the extension is desired. (Art. 173, Reg. 33, Jan. 5, 1914.)

Interest Runs During Period Extension is Availed of, ¶2346.

1507 Law ¶255. **Extension of Time for Filing Returns May be Granted by the Commissioner.**—"The Commissioner may grant a reasonable extension of time for filing returns whenever in his judgment good cause exists and shall keep a record of every such extension and the reason therefor. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months." [See ¶3026.]

1508 The Commissioner of Internal Revenue may, in his discretion, upon application therefor and upon satisfactory showing, grant a reasonable extention of time, in meritorious cases, for filing returns of income by persons * * * who are required to make and file returns of income and who are unable to file said returns on or before March [15] of each year. (Art. 22, ¶165, Reg. 33, Rev., Jan 2, 1918.)

1509 In meritorious cases the Commissioner of Internal Revenue is authorized to grant a further reasonable extension of time in which returns may be filed, provided the reason for the request therefor is presented fully in writing and is considered good and sufficient. (Art. 224, ¶642, Reg. 33, Rev., Jan. 2, 1918.)

1510 **Time Extended in Which to File Returns of Income by Certain Nonresident Alien Individuals and Corporations and American Citizens Residing or Traveling Abroad.**—The provisions of T. D. 2445, February 12, 1917, (from time to time amplified and extended to include November 1, 1917) granting to nonresident alien individuals and corporations and American citizens residing abroad **who because of war conditions** have not been able to file their returns of income for 1916, are hereby amended so as to extend the time in which returns for 1916 and subsequent years may be filed, for such period as may be necessary to and including ninety days after the proclamation of the President of the United States announcing the close of the war with Germany.

1511 In all such cases there is required to be attached to the return an affidavit stating the cause or causes of delay in filing returns of income within time required by law, in order that, upon the showing made, the Commissioner of Internal Revenue may determine whether the failure to file returns in time "was due to a reasonable cause and not to wilful neglect." When the showing justifies a conclusion that the failure to file returns in time is excusable, no penalty by way of addition to tax will be imposed. (T. D. 2581, Nov. 10, 1917.)

1512 The provisions of T. D. 2581, dated November 10, 1917, shall apply to returns by American citizens residing or traveling abroad, including persons in the military or naval establishments of the United States stationed or on duty beyond the limits of the States and the Territories of Hawaii and Alaska.

Any such person filing his return after April 1, 1918, but on or before October 1,

1513 1918, embodying therein or attaching thereto a written statement showing that he comes within the classes designated by T. D. 2581, is relieved of the necessity of filing the supporting affidavit required by that Decision. (T. D. 2672, March 16, 1918.)

1514 **Extension of Time for Filing Returns by Enemies and Allies of Enemies.**—An extension of time is hereby granted for such period as may be necessary, not exceeding ninety days after proclamation by the President of the United States of the end of the war with Germany, for filing returns of income for 1917 and subsequent years under Sections 6(c), 8(b)(c) and 13 (b)(c) of the Income Tax Act of September 8, 1916, as amended, and under the War Income Tax Act of October 3, 1917, by or for enemies or allies of enemies as defined by Section 2 of the Trading with the Enemy Act of October 6, 1917, not holding a license granted under the provisions of said Act; *Provided, however*, (1) that return of information shall be made in compliance with Section 28 of the Income Tax Act, and (2) that all persons required to withhold the normal tax pursuant to Sections 9(b) and 13 (e)(f) of the Income Tax Act shall make due return and payment thereof for the period ending October 6, 1917, in respect of income paid over before such date to or for any such enemies or allies of enemies, and further (3) that, except for such payment, all persons who on October 6, 1917, had, or since have had, or may hereafter have, control of any money or other property for any such enemy or ally of enemy, or who on October 6, 1917, were, or since have been, or may hereafter be, indebted to any such enemy or ally of enemy, (a) shall hold and deliver all said money and property in all respects subject to said Trading with the Enemy Act and to the orders of the President of the United States and of the alien property custodian thereunder, and (b) shall in due course file returns of income in respect of all said money and property for such period as may elapse or have elapsed prior to the actual delivery of said money and property to said alien property custodian. (T. D. 2673, March 18, 1918.) [¶3028.]

1515 **Withholding at the Source and Returns of Information in Connection with Income Payments to the Alien Property Custodian.**—With reference to your telegram of April 30, and the previous exchange of letters, and telegrams concerning withholding in the case of interest and dividends paid on securities formerly belonging to enemies, T. D. 2673 [¶1514] of March 18, 1918, granted an extension of time for filing returns of income by or for enemies provided certain conditions were observed and performed.

The first condition was that return of information should continue to be made
1516 in compliance with Section 28 of the Income Tax Act and the regulations thereunder, in just the same way as if T. D. 2763 had never been issued.

The second condition was that all persons required to withhold the normal tax
1517 on payments to enemies should make due return of such tax withheld for the period ending October 6, 1917, in respect of income paid over before such date to or for any such enemies. As on October 6, 1917, the Trading with the Enemy Act was passed, which affected the status of property and claims theretofore belonging to enemies no such withholding after that date was deemed necessary.

The third condition was that, except for such payment of the tax withheld on income
1518 paid over before October 6, 1917, all persons who had control of any money or other property for or were indebted to any enemy should hold and deliver all such money and property subject to the orders of the alien property custodian, and also should file returns of income in respect to such money and property for such period as might elapse or have elapsed before delivery of such money, and property to the alien property custodian. In other words, if delivery was made in November, 1917, a return should be filed for the portion of the year 1917 elapsing before such delivery, and if delivery was made in March, 1918 a return should be filed for the year 1917 and also before March 1, 1919, for such portion of the year 1918 as elapsed before such delivery.

The effect of T. D. 2673, so far as withholding is concerned, was to put payments
1519 made after October 6, 1917, to the alien property custodian or to his designated depositaries in exactly the same category as payments made to or for citizens or residents of the United States. Withholding at the source should accordingly cease, except in the case of interest payments on tax-free bonds where no exemption is claimed. T. D. 2673 by its terms did not affect and was not intended to affect the rules with reference to withholding in the case of tax-free bonds. Form 1001 should be used, except where no exemption is claimed with reference to interest on tax free bonds in which case Form 1000 is proper.

No distinction is to be made between payments made directly to the alien property
1520 custodian and to his depositaries or between interest on registered bonds and interest on coupon bonds.

1521 This letter supersedes the telegram from this office dated April 16, 1918. (Letter to the Southern Pacific Company, New York, N. Y., signed by Commissioner Daniel C. Roper, and dated May 3, 1918.) [¶3007.]

1522 **Use of Ownership Certificates by or on Account of the Alien Property Custodian: Substitution. Identification of Particular Accounts.**—This office is in receipt of your letter dated May 4, 1918, inquiring whether substitute certificates may now be

used in connection with collections for the Alien Property Custodian; whether exemption may be claimed or not claimed in the same manner as for resident citizens; and whether any identification of the particular account will be required on ownership certificates other than designating Alien Property Custodian as owner.

In reply you are advised that it is the opinion of this office that payments of income
1523 made to the Alien Property Custodian on account of enemies or allies of enemies fall into the same class as payments made to citizens or residents of the United States; in which case substitute certificates may be used in connection with payment of such income. However, in accordance with the provisions of Treasury Decision 2589 [Reg. 33, Rev. at ¶632.] the use of substitute certificates representing income accruing to non-resident aliens other than enemies or allies of enemies has been discontinued.

As it would be impossible for the Alien Property Custodian or his designated de-
1524 positary to ascertain in each case whether the recipient of the income is entitled to the specific exemption, it has been decided that when coupons are detached from bonds containing a tax-free covenant clause, Form 1000, revised, should be executed by the Alien Property Custodian or his designated depositary, the amount of interest being entered on line 1. In all other cases, Form 1001, revised, should be executed. (Letter to the Central Trust Company of Illinois, Chicago, Ill., signed by Deputy Commissioner L. F. Speer, and dated June 6, 1918.)

1525 Receipt is acknowledged of your letter of June 27, 1918, relative to the information that is required under the heading "Owner of Bonds" in ownership certificates executed to cover bond interest paid over to the Alien Property Custodian. You point out that although you have been informed that the name and address of the enemy or ally of enemy, on whose account any particular item of interest may be paid over to the Alien Property Custodian need not be given in the ownership certificate filed, some corporations have refused payment of interest when such certificates failed to show the name and address of the enemy or ally of enemy. ¶In reply you are advised that where ownership certificate form, either 1000 or 1001, is executed to cover funds paid over to the Alien Property Custodian, the certificate will be sufficiently complete for present indentification purposes of this office if the name of the taxpayer and the trust number are given under the heading "Owner of Bonds" with the name and address of the enemy or ally of enemy concerned excluded. (Letter to the Equitable Trust Company, New York, N. Y., signed by Deputy Commissioner L. F. Speer, and dated July 13, 1918.)

1526 Law ¶256. **Where Returns are to be Filed by Individuals.**—"(b) Returns shall be made to the collector for the district in which is located the legal residence or principal place of business of the person making the return, or," [¶3029.]

1527 Law ¶257. "if he has no legal residence or principal place of business in the United States, then to the collector at Baltimore, Maryland."

1528 Returns of income of individuals are to be filed with the collector of internal revenue for the district in which such person has his legal residence or principal place of business, or if there be no legal residence or place of business in the United States, then with the collector of internal revenue at Baltimore, Md. The returns shall be in such form as shall be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. (Art. 26, ¶172, Reg. 33, Rev., Jan. 2, 1918.)

1529 **Where Returns may be Filed by Persons in the Military or Naval Forces.**—Persons in the military or naval service of the United States may file their returns of income with the collector of internal revenue of the district in which they have a legal residence, or with the collector of internal revenue at Baltimore, Md. (Art. 26, ¶174, Reg. 33, Rev., Jan. 2, 1918.)

1530 Law ¶359. **Where Returns are to be Filed by Corporations.**—"(b) Returns shall be made to the collector of the district in which is located the principal place of business or principal office or agency of the corporation, or,"

1531 Law ¶360. "if it has no principal place of business or principal office or agency in the United States, then to the collector at Baltimore, Maryland."

1532 The principal place of business of a corporation is the place or office in which are kept the books of account and other data from which the return is to be prepared. (T. D. 2090, Dec. 14, 1914.)

1533 **Returns of Domestic Corporations Whose Books are Kept Abroad.**—In the case of domestic corporations whose books of account and other data are kept in foreign countries, the returns should be made to the collector of internal revenue of the district

in which they have branch offices in this country, if they have such branch offices. Otherwise, the returns of annual net income of such corporations should be made to the collector of the district in which are located the statutory offices of the corporations. (T. D. 2137, Jan. 30, 1915.)

1534 **Corporations Doing Business in the Philippines and Porto Rico.**—[For the taxing of such corporations under the present law read at ¶511]. Corporations whose business is done wholly in Porto Rico and the Philippine Islands, even though incorporated in the United States, are held to be resident corporations of these possessions, and will make returns and pay the income tax to the collectors of internal revenue having jurisdiction there. (T. D. 2090, Dec. 14, 1914.)

1535 Such corporations organized under laws of the United States or any State thereof, resident in the United States but doing business in these possessions are taxable in the United States. If they are organized under the laws of the United States or local laws of these possessions and resident in said possessions, they are required to pay their tax in the Philippines or in Porto Rico, as the case may be. The law provides that corporations shall make their returns "to the collector of internal revenue for the district in which they have their principal place of business." Held: "Principal place of business" of a corporation is the place of office in which are kept the books of account and other data from which the return is to be prepared. (T. D. 2090, Dec. 14, 1914.)

1536 A domestic corporation doing the greater part of its business in the United States and having its principal place of business in this country and transacting business in Porto Rico through a branch office, is required to report in its return of annual net income its entire earnings from all sources including those arising and accruing to the branch in Porto Rico or elsewhere.

1537 The return of such corporation will be made to the collector of internal revenue of the district of this country in which is located its principal place of business. (T. D. 2137, Jan. 30, 1915.)

1538 Law ¶258. **Understatement in Returns and Increases by the Collector.**—"Sec. 228. That if the collector or deputy collector has reason to believe that the amount of any income returned is understated, he shall give due notice to the taxpayer making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated, may increase the same accordingly." [¶1030.]

1539 Law ¶259. **Taxpayer May Appeal Collector's Decision, to the Commissioner.**—"Such taxpayer may furnish sworn testimony to prove any relevant facts and if dissatisfied with the decision of the collector may appeal to the Commissioner for his decision, under such rules of procedure as may be prescribed by the Commissioner with the approval of the Secretary."

1540 **Correction by the Taxpayer of Erroneous Return.**—All returns should be carefully scrutinized, and, if improperly prepared, they should be returned to the taxpaper for correction, with instructions that if a new return be executed, the old one, showing the date of the receipt thereon, should be fowarded to the Collector to avoid the possibility of subjecting the taxpayer to additional tax or penalties for failure to file the return within the period required by law.

1541 A record of each return sent back to the taxpayer for correction should be made in the office of the Collector, so that if the taxpaper fails to properly amend and forward same, the Collector may take steps to secure the return. (Extract from Mimeograph Letter No. 1160 to Collectors, signed by Acting Commissioner David A. Gates and dated February 9, 1915.)

1542 **Correction of Erroneous Returns at the Instance of the Collector.**—Referring to the returns of annual net income to be filed by corporations for the year [1914], you are requested to examine each return closely with a view to having such returns as nearly correct as possible before forwarding to this office. (Mimeograph letter No. 1148 to Collectors, Jan. 16, 1915.)

1543 Referring to your statement that the representative of this office insists upon the officers of corporations signing amended returns without giving any reasonable time for investigation on the part of the officers, you are informed that examining officers have been instructed by this office to secure from corporations amended returns wherever, as a result of their examinations, it is shown that the original returns were not correct.

1544 It is not the desire of this office, however, that examining officers shall not give the officers of corporations the fullest opportunity to make any investigation they may desire prior to signing these amended returns, provided, of course, such investigation does not cover an unreasonable length of time. (Extract from letter to the Industrial Association of Cincinnati, signed by Commissioner W. H. Osborn, and dated February 2, 1915.)

1545 **Amended Return not Required When Audit or Investigation Reveals Necessity for a Further Tax.**—Hereafter, in cases where an individual, a fiduciary, or a withholding agent has been found subject to a further tax as a result of the audit of a return in this office, or of an investigation made by a Revenue Agent an amended return will not be required.

In cases where a further tax is to be assessed, either against an individual, a fidu-
1546 ciary, or a withholding agent, collectors will be advised by letter from this office of the amount of further tax to be assessed, and the reason for making such assessment will be fully set forth.

With a view to minimizing the work in the offices of Collectors a carbon copy of
1547 the letter to them will be enclosed, which should be forwarded by the Collector to the individual, fiduciary, or withhholding agent, as the case may be, in lieu of writing a letter of explanation.

The use of Income Tax Form 6981 by Revenue Agents will be discontinued in
1548 connection with reports on Personal Income Tax Returns. (Mimeograph Letter No. 1232 to Collectors, June 22, 1915.)

1549 Law ¶443. **Penalty for Failure to Make Return or for False or Fraudulent Return.**—Sec. 3176, Revised Statutes. "If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list,"

1550 Law ¶444. "the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise."

1551 Law ¶445. "In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector."

1552 Law ¶446. "Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes."

1553 Law ¶448. "The Commissioner of Internal Revenue shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section."

1554 Law ¶449. "In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount,"

1555 Law ¶450. "except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax."

1556 Law ¶451. "In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount." [50% of the amount of the deficiency only, added in case of income and war excess-profits tax returns, ¶2358.]

1557 Law ¶452. "The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax"

1558 Law ¶453. "unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax."

[In relation to the above see ¶3032.]

1559 **Penalty 25 Per Cent Additional.**—In section 3176, as [formerly] incorporated in and made a part of this title, it is provided that—

In case of any failure to make and file a return within the time prescribed by law or
1560 by [regulation made under authority of law] the Commissioner of Internal Revenue shall add to the tax [25] per centum of its amount, except that when a return is voluntarily * * * filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax.

The time "prescribed by [law]" [applies equally] to an extension of time, not ex-
1561 ceeding 30 days from the normal due date, on or before which the return is required to be filed. That is to say, if upon application by a corporation, an extension of time is granted by the collector the return must be filed on or before the last day of the

extended period. Otherwise the [25] per cent tax will be added, subject to the provisions above quoted. (Art. 228, ¶648–650, Reg. 33, Rev., Jan. 2, 1918.)

1562 **What Constitutes Reasonable Cause For Failure to File Return.**—Section 3176, Revised Statutes, as amended * * * provides that if after delinquency has ensued * * * , the delinquent individual or corporation shall have filed with the collector of internal revenue a return and shall accompany such return with a showing "that the failure to file it (in time) was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax."

"Reasonable cause," for the purpose of this article of the regulations, is held to be
1563 such a condition of fact as had the taxpayer in default exercised ordinary business care and prudence it would have been impracticable or impossible for him to have filed return on the prescribed time. (Art. 54, ¶291–292, Reg. 33, Rev., Jan. 2, 1918.)

1564 In case of any failure to make and file a return within the time prescribed by law, or within the period of extension granted by the collector, the Commissioner of Internal Revenue shall add to the tax [25] per cent thereof, except that where a return is voluntarily filed, after the due date, * * * , and it is shown that the delinquency was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. (Art. 225, ¶643, Reg. 33, Rev., Jan. 2, 1918.)

1565 Delinquent returns must be accompanied by an affirmative showing of fact alleged as reasonable cause for excuse from [25] per cent penalty. The Commissioner of Internal Revenue will pass upon the validity of the showing. The showing must be in the form of an affidavit, under oath, and should be attached to the return. The penalty of [25] per cent "additional to tax" will be asserted in all cases where the showing made is not approved by the Commissioner of Internal Revenue. (Art. 54, ¶294, Reg. 33, Rev., Jan. 2, 1918.)

1566 **Statement Under Oath of Cause of Delay.**—In all such cases the collector will * * * procure from the corporation to be forwarded with the return a statement, under oath, setting out in specific terms the cause of the delay, and if such cause is found to be reasonable, that is, a cause which, had the corporation exercised ordinary business care and prudence, would have made it impracticable or impossible to file the return within the prescribed time, the [25] per cent addition will not be made to the tax.

Exemption from the [25] per cent additional tax will not, however, necessarily
1567 relieve the corporation from liability to the specific penalty, viz., a penalty of not to exceed [$1,000]. (Art. 225, ¶644–645, Reg. 33, Rev., Jan. 2, 1918.)

1568 A 50 per cent additional tax attaches upon all delinquent returns for 1916 and subsequent years [now 25%] in the absence of a showing of a reasonable cause for delinquency. If the cause assigned is carelessness, oversight, or other trivial cause, the [25] per cent penalty will be assessed. (T. D. 2584, Nov. 20, 1917.)

1569 **Ad Valorem Penalties Attach to Income.**—Ad valorem penalties (those measured by income) attach to income and are to be enforced regardless of the death of the owner of the income by which the penalty is measured. (Art. 52, ¶285, Reg. 33, Rev., Jan. 2, 1918.)

1570 The fifty [25] per cent addition to the tax for failure to make return and the one hundred [50] per cent addition for intentional false or fraudulent return, will not be assessed against delinquent withholding agents (Mimeograph letter No 1265, to Collectors, Sept, 23, 1915.)

1571 **What Constitutes a "False" Return.**—[Comment: In National Bank of Commerce in St. Louis v. E. B. Allen, Collector (223 Fed. 472) the question of the 100% [now 50%] penalty for rendering a false return was not at issue but the following statement was included in the decision: "It is true that the Commissioner did not add 100 per centum of the tax levied as provided for a false or fraudulent return, and we may conclude from this that the Commissioner was of the opinion that the returns were not false or fraudulent in the sense that those words were used in the language of the law which authorizes the addition of the penalty."] [Read also at ¶2380.]

1572 Law ¶388. **Specific Penalties.**—"Sec. 253. That any individual, corporation, or partnership required under this title
to pay or collect any tax,
to make a return or
to supply information,
who fails

1573 to pay or collect such tax,
to make such return, or
to supply such information
at the time or times required under this title,

1574 shall be liable to a penalty of not more than $1,000.

1575 Any individual, corporation, or partnership, or any officer or employee of any corporation or member or employee of a partnership,

1576 who willfully refuses
to pay or collect such tax,
to make such return, or
to supply such information
at the time or times required under this title, or

1577 who willfully attempts in any manner
to defeat or evade the tax imposed by this title,

1578 shall be guilty of a misdemeanor and
shall be fined not more than $10,000 or imprisoned for not more than one year, or both, together with costs of prosecution."

1579 Specific penalties provided by the income-tax law are held to attach to the person and in case of death of such person are non-enforceable. (Art. 52, ¶284, Reg. 33, Rev., Jan. 2, 1918.)

1580 **The specific penalty to be asserted independently of the ad valorem penalty.**—The specific penalty, subject to the authority of the Commissioner of Internal Revenue to entertain offers in compromise, * * * and is to be asserted independently of the penalty by way of "addition to the tax." (Art. 54, ¶295, Reg. Rev., Jan. 2, 1918.)

1581 **The Specific Penalty Will Not be Asserted under Certain Circumstances.**—Liability to specific penalty attaches upon all delinquent returns and is recoverable by suit. By Section 3214 R. S. the Commissioner of Internal Revenue may or may not institute suit. It has been decided not to institute suit nor to assert specific penalty in certain cases. The assertion of specific penalty does not depend upon the fact of whether or not the [25]% addition to tax has been assessed. In some cases where the [25]% addition to tax must be assessed because the return was filed after notice from the collector, the specific penalty will not be asserted. It will not be asserted, regardless of whether the [25]% addition to tax has been assessed, in cases falling under any of the following designations:

1. Extension granted. Where a return is filed within the thirty-day period of
1582 extension granted by the collector or within a further period of extension granted by the Commissioner of Internal Revenue, as provided by Section 14 (c) of the Act of September 8, 1916.

2. Return on time. Specific penalty will not be asserted upon an amended return
1583 provided the original return was filed within the prescribed time.

3. Mailed in time. Where an affidavit is filed satisfactorily establishing that
1584 the return was placed in the mails in ample time to reach the Collector's office in ordinary course of mails before the close of business on the final day for filing.

4. Tentative return. Where an informal return was filed within the time pre-
1585 scribed. The return of a parent company including therein the income of a subsidiary company will be accepted as a tentative return of the subsidiary company, if the fact is stated that the tentative return includes the income of the subsidiary.

5. Filed in wrong district. Where the return was filed in some other collection district
1586 within the prescribed time.

6. Net income under $3,000. Where it develops that the net income of an indi-
1587 vidual for 1913, 1914, 1915 or 1916 was less than $3,000, or under the Act of October 3, 1917, for 1917, etc., less than $1,000 or $2,000.

1588 7. Erroneous information. Where the delinquency is alleged to be due to erroneous or misleading information given by officials or employees of the Internal Revenue Service and there is no evidence in conflict therewith.

8. Organization incomplete. Where it is established that the organization of
1589 a corporation, joint-stock company or association, or insurance company was not completed until after the expiration of the period for which the return should have been filed.

9. Death. Where by reason of the death of an individual his return for the
1590 year or portion of the year prior to his death is not filed within the time prescribed. The death of a delinquent abates liability to specific penalty. An administrator or executor is charged with the duty of rendering a return for the decedent, and if he is

appointed in ample time to make the return prior to March 1st and fails to do so, he should be charged as delinquent and the specific penalty should be asserted against him. The administrator or executor will not be relieved from specific penalty unless the return is made within a reasonable time after his appointment.

10. Severe illness or unavoidable absence. Where it is clearly established that
1591 the delinquency in the filing of a return of an individual or of a corporation within the time prescribed was due to severe illness of the individual or of an officer of a corporation whose duty it was to prepare or sign the return, or to unavoidable absence from place of business or place of abode.

11. Absence from the United States. Where it appears that the filing of a return
1592 within the time prescribed was rendered impossible by reason of absence from the United States. Delinquency beyond the period of extension which may be granted by the Commissioner of Internal Revenue will not be excused under this heading.

12. Military or naval service of United States. Where delinquency of an indivi-
1593 dual was occasioned by service in the military or naval forces of the United States.

13. Not organized for profit. Comprehends numerous small corporations not
1594 organized primarily for profit, such as local telephone companies, co-operative purchasing societies, etc., concerning whose liability under the law to make a return there may have been a reasonable doubt.

14. Inactive corporations. Those which transacted no business and had no
1595 income during the return year.

15. Fiscal year. Corporations which have established a fiscal year in the man-
1596 ner prescribed by law which file a return on or before the first day of the third month following the close of the fiscal year.

16. Assigned. Where corporations have made an assignment on account of in-
1597 solvency and do not intend again to engage in business.

17. Insolvent. Where the assets of a corporation are insufficient for the pay-
1598 ment of its debts and the corporation has ceased to do business.

18. Charter forfeited. Where, prior to the date when the return was due, the
1599 charter of a corporation is forfeited on account of noncompliance with state laws. It must be clear, however, that business in the name of the corporation was suspended at the time of such forfeiture. If business was continued under the same name, the concern will be held to be an association and the same liabilities will attach as if the charter had not been forfeited.

19. Defunct. Where corporations are out of business, have no assets, maintain
1600 no organization, and the purpose for which organized has been abandoned.

1601 20. Dissolved. Where all the assets of a corporation have been distributed.

21. Sale. Where corporations have disposed of all their assets and property
1602 by sale to other corporations, firms, or individuals and business is not longer carried on under their charters.

22. Consolidated, merged or succeeded. Where corporations have terminated their
1603 existence as represented by these terms and it appears that no assets or property remain in the name of the retiring corporation.

23. No assets. Includes all corporation having no assets from which to submit
1604 an offer in compromise. (L. Mimeograph Letter No. 1675 to Collectors, November 3, 1917; continued at ¶1606.)

1605 **Compromises.**—"The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney-General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise." (Section 3229, Revised Statutes.)

1606 In cases not included in any of the above classes [¶1581 to ¶1604], the specific penalty will be asserted, and if the delinquency was not due to an intention to delay the administration of the law the minimum amount which will be accepted in compromise is as follows:

$5.00 in the case of an individual or withholding agent.

$10.00 in the case of a corporation, joint-stock company or association, or insurance company.

These amounts will be considered insufficient and will not be accepted in any case
1607 where it appears that a taxpayer was intentionally violating the privisions of law, and purposely delaying the filing of the returns. In all cases where revenue agents or other examining officers discover that any individual has an appreciable taxable income and

the examining officer is of the opinion that the individual knew or should have known that he was required to make a return, he should make a recommendation as to the minimum amount which should be accepted as an offer in compromise, and where the intent to evade tax is plain he should recommend prosecution. Special attention should be called to cases of individuals having a taxable income who have failed to file returns for a number of years.

1608 In the case of delinquent returns filed pursuant to the provisions of Section 2 of the Act of October 3, 1913, specific penalty will not be asserted if the case comes under any of the above designations [¶1581 to ¶1604,] nor against taxpayers or withholding agents specifically relieved from specific penalty by the proviso contained in Section 18 of the Income Tax Law of September 8, 1916, as amended by Section 1209 of the Act of October 3, 1917, [¶734] which reads as follows:

"PROVIDED, That where any tax heretofore due and payable has been duly paid by the taxpayer, it shall not be re-collected from any withholding agent required to retain it at its source, nor shall any penalty be imposed or collected in such cases from the taxpayer, or such withholding agent whose duty it was to retain it, for failure to return or pay the same unless such failure was fraudulent and for the purpose of evading payment."

1609 Furthermore, specific penalty will not be asserted against taxpayers delinquent in filing returns for 1913, nor against corporations, joint-stock companies or associations or insurance companies delinqnent in filing returns for prior years, unless it appears beyond a reasonable doubt that there was an intent on the part of the delinquent to violate the provisions of law. The specific penalty cannot in any case be asserted after five years from date of delinquency, and no recommendation with respect to penalty in such cases need be made. The minimum amounts mentioned above will be accepted in compromise of liability to specific penalty for each of the years 1914 and 1915, as well as for 1916, except where there was an apparent intent to violate the taxing act, in which case the offer must be increased in a substantial amount.

1610 In the case of every delinquent return, the collector should secure a statement [Read at ¶1617.] from the delinquent of the cause of delinquency, which should be attached to and made a part of the return, together with delinquent card. If the delinquent is not relieved from specific penalty by clearly falling within one of the classes enumerated in this Mimeograph Letter [¶1581 to ¶1604], or if he fails, upon request, to file a statement of the reason for delinquency, the specific penalty should be promptly asserted and the delinquent advised of his privilege to submit an offer in compromise. If the collector is of the opinion that the delinquent should be relieved from the specific penalty under the provisions of this Mimeograph Letter, he should note on the delinquent card "Relieved under Mim. No. 1675."

1611 In all cases of delinquency discovered by revenue agents and other examining officers, if the delinquency falls within a period for which the penalty can be asserted, such officers should secure from the delinquent a sworn statement setting forth the reason for delinquency. This statement should be attached to the return forwarded to the collector. The examining officer should state in his report the alleged reason for delinquency and if he is of the opinion that the minimum amount should not be accepted as an offer in compromise of liability to specific penalty, he should make a recommendation as to the minimum amount which should be accepted. Consideration will be given such recommendation by this office in accepting an offer in compromise. In forwarding offers in compromise on Form 656 collectors should call attention to revenue agent's reports, if any, in which the non-acceptance of the minimum amount as an offer in compro nise is recommended. The statement or affidavit attached to the return setting forth the reason for delinquency is not in lieu of the affidavit required to be attached to Form 656.

1612 Mimeograph Letters Nos. 1347, 1390, 1465, 1477, 1530 and CT-Mim. No. 54 and CT-Mim. No. 56 are hereby superseded. (L. Mimeograph Letter to Collectors No. 1675, November 3, 1917.)

1613 **Offers in Compromise by the Taxpayer.**—[A letter, similar in content to the following, suitably modified if the delinquent was a corporation, has been used in the past by Collectors in charging taxpayers with delinquency and in notifying them of their privilege to submit offers in compromise.]

Sir: Your return of net income was not received in this office until————— thereby involving you in liability to a specific penalty of not * * * more than $1,000 under the Act of ————, in addition to the [25]% additional tax which will be assessed and collected.

1614

The provisions of the Act are mandatory, and no excuse or explanation can be accepted, except a showing that a complete or tentative return was in fact mailed in time to have reached this office, or a Deputy Collector, in the ordinary course of business on or before March 1,——.

1615

However, before instituting proceedings in Court for the imposition of the specific penalty, I am directed to call your attention to the provisions of Section 3229 [¶1605], Revised Statutes, which reads in part as follows:

1616

"The Commissioner of Internal Revenue with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon," * * *.

Should you desire to take advantage of your privilege under this section and to
1617 submit an offer in compromise, the amount offered should be forwarded promptly to *this office* in the form of cash, postal money order, or certified check which can be cashed without cost, payable to my order, accompanied by an affidavit substantially in the following form:

"To the Commissioner of Internal Revenue:

I hereby solemnly swear (or affirm) that my delinquency in filing return of net income as required by the Act of ———, was not due to any intent to violate the law or evade taxation, but was due to (here insert, concisely and clearly, the reason for delay).

Desiring to compromise my liability I hereby tender the sum of $————, which I request be accepted in compromise of the specific penalty only."

To be signed and sworn to before a deputy collector, notary, or other officer auth-
1618 orized to administer oaths.

This affidavit will then be forwarded by me, together with the sum offered, to the
1619 Commissioner for consideration, and you will be notified by him of his acceptance or rejection of your proposal. In the latter event, you may increase your offer, if you so desire.

* * * * * * * * * * *

Respectfully,

———————————

Collector of Internal Revenue.

1620 Law ¶429. **The General Administrative Provisions of Law Relative to the Making of Returns, etc., are Applicable.**—"Sec. 1305. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe."

[¶3126.]

1621 Law ¶442. **Collectors to Inquire After and Concerning Persons Liable to Make Income Tax Returns.**—"Sec. 3172. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects."

1622 **Income-Tax Agents and Inspectors.**—Revenue agents in charge of revenue agents' divisions and income-tax revenue agents and inspectors are hereby instructed as follows:

1. Income-tax agents and inspectors appointed under the provisions of the act
1623 of October 3, 1913, and paid from the appropriation for collecting the income tax will be assigned to duty under the supervision of agents in charge of revenue agents' divisions.

2. Persons appointed either as income-tax agents or income-tax inspectors, when
1624 the appointment is sent from this office, will be instructed by letter to report to one of the division revenue agents for duty, and until otherwise ordered may report either in person or by letter, and if by letter await the instructions of the agent in charge of the division to which they are assigned.

3. Officers of this class are expected to perform the duties of their offices where
1625 their services are required, but for the present, and until they become somewhat familiar with the duties of their places, they will be assigned to the revenue agent in charge of the division embracing their legal residence.

4. Income-tax agents and inspectors will be expected to confine their operations
1626 to income-tax work so long as there is income-tax work to be performed, and division agents are admonished not to employ officers of this class for the general or ordinary work of the bureau except when their services are not required on income-tax work.

5. The duties of officers of this class are to ascertain and report the names of persons
1627 who in their opinion are liable to the income tax and who have failed to make return as required by law; to inquire into income-tax returns where there is any suspicion that the return made is erroneous; to examine the books and accounts of persons who have made returns, for the purpose of ascertaining and reporting as to whether the law has been complied with, when so ordered by the agent in charge of the division to which they are assigned; to inquire into the manner in which income-tax employees are discharging their official duties and to report those who have failed in this respect. For the purpose of securing such information as they may desire they may visit the office of any State, county, or

municipal officer, and for the general purpose of their employment may confer with any collector or deputy collector of internal revenue within the territory in which they are authorized to operate.

6. The reports of these officers should be made to the agent in charge of the
1628 division to which they are assigned, who in turn will report to the Commissioner of Internal Revenue and the collector of the proper district.

1629 7. In the discharge of their official duties officers of this class, as well as all officers of the Internal-Revenue Bureau, in making inquiries and investigations are expected to exercise sound discretion, treat all persons with due courtesy, and, while acting firmly and courageously, to avoid all contention or controversy that would give just ground for complaint. (T. D. 1932, Jan. 13, 1914.)

1630 Law ¶430. **Return May Be Required of Any Person Whether Liable to Tax or Not.**—"Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax."

1631 Law ¶431. **Examination of Persons, Books and Papers.**—"The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons."

1632 Law ¶454. **Jurisdiction of District Courts in Connection with Attendance, Testimony or Production of Books.**—"Sec. 1318. That if any person is summoned under this Act to appear, to testify, or to produce books, papers or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data."

1633 Law ¶455. "The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction and of *ne exeat republica*, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions."

1634 **Annual Returns to be Forwarded by Collectors to the Commissioner.**—The annual returns will be forwarded by collectors by registered mail or express to the Commissioner of Internal Revenue with the list for the month in which the returns are filed. Collectors must provide that said returns and all forms relating thereto are securely sealed in envelopes or packages before forwarding the same. (Art. 25, ¶168, Reg. 33, Rev., Jan. 2, 1918.)

1635 Collectors should not under any conditions retain copies of returns in their offices, but when information relative to any return of annual net income filed by any taxpayer is necessary in connection with the assessment and collection of the income tax, the same may be secured from the Commissioner of Internal Revenue at Washington. (T. D. 2024, Oct. 15, 1914.)

1636 Law ¶403. **Returns to be Public Records.**—"Sec. 257. That returns upon which the tax has been determined by the Commissioner shall constitute public records;

1637 Law ¶404. **Returns to be Open to Inspection Only on Order by the President.**—"but they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President:"

1638 Law ¶405. **Returns to be Open to Inspection of Proper State Officers.**—"*Provided*, That the proper officers of any State imposing an income tax may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of the corporation, at such times and in such manner as the Secretary may prescribe:"

1639 Law ¶406. **Returns to be Open to Inspection by Stockholders of Record Owing One Per Cent or More of the Outstanding Stock of a Corporation.**—"*Provided further*, That all bona fide stockholders of record owning 1 per centum or more of the outstanding stock of any corporation shall, upon making request of the Commissioner, be allowed to examine the annual income returns of such corporation and of its subsidiaries."

1640 Law ¶407. "Any stockholder who pursuant to the provision of this section is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both."

1641 Law ¶408. **Lists of Individuals Making Income Tax Returns to be Prepared.**—"The Commissioner shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the collector in each internal-revenue district and in such other places as he may determine, lists containing the names and the post-office addresses of all individuals making income-tax returns in such district."

[In connection with above read at ¶3063.]

1642 **Inspection of Returns; Copies of Returns.**—When the assessments shall have been made the returns shall be filed in the office of the commissioner and shall constitute public records, subject to inspection upon the order of the President, under the rules and regulations prescribed by the Secretary of the Treasury and approved by the President. Copies of returns on file in the Commissioner's office are not permitted to be sent to any person, except the corporation itself or to its duly authorized attorney. A duly authorized attorney for this purpose is one possessing a properly executed power of attorney in writing by the corporation, which designation shall be signed by two officers of the corporation and bear the impress of the seal. (Art. 226, ¶646, Reg. 33, Rev., Jan. 2, 1918.)

1643 **Certified Copies.**—At the request of the Attorney General or a United States district attorney, certified copies of returns may be made by the Commissioner of Internal Revenue and delivered to the United States district attorneys for their use as evidence in the prosecution or defense of suits in which the collection or legality of the income tax assessed on the basis of such returns is involved, or, by special permission of the Secretary of the Treasury, such certified copies of returns may be furnished as evidence in any suit to which the United States Government and the corporation, etc., making the returns are parties, or as evidence before any United States grand jury, and in which in the opinion of the Attorney General, such certified copies would constitute material evidence. (Art. 227, ¶647, Reg. 33, Rev., Jan. 2, 1918.)

1644 The supplementary statement which is made a part of the return form prescribed for the use of corporations in making returns of annual net income is by express terms made a part of the return, and to the same extent that the return constitutes a public record and is open to inspection, to that extent the supplementary statement is also a public record and open to inspection "only upon the order of the President under rules and regulations prescribed by the Secretary of the Treasury and approved by the President." (T. D. 2137, Jan. 30, 1915.)

1645 Copies of returns on file in the Commissioner's office are not permitted to be sent to any person, except to the corporation itself or to its duly authorized attorney. (Art. 178, Reg. 33, Jan. 5, 1914.)

1646 In no case are the original returns to be removed from the office of the commissioner, except upon order and by direction of the Secretary of the Treasury or the President. (Art. 179, Reg. 33, Jan. 5, 1914.)

1647 The following executive order, together with regulations signed by the Secretary and approved by the President, relative to the publicity feature of Section 2 of the Act of October 3, 1913, imposing an income tax, is hereby published for your information.

EXECUTIVE ORDER.

1648 Pursuant to the provisions of Section 2 of the Tariff Act of October 3, 1913, said section providing for an income tax, and which contains in paragraph G, subparagraph (d) the following provision,

"When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the Commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: Provided, That any and all such

returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President: Provided further, That the proper officers of any State imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to any abstract thereof, showing the name and income of each such corporation, joint stock company, association or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe,"

it is hereby ordered, that all such returns shall be subject to inspection in accordance and upon compliance with rules and regulations prescribed by the Secretary of the Treasury and approved by the President, bearing even date herewith.

WOODROW WILSON.

THE WHITE HOUSE,
July 28, 1914.

[No. 1999.]

INSPECTION OF RETURNS.

1649 By Section 2 of the Act of October 3, 1913, Congress imposed a tax upon the entire net income arising or accruing from all sources to every citizen of the United States whether residing at home or abroad and to every person residing in the United States though not a citizen thereof, and upon the entire net income from all property owned, and of every business, trade, or profession carried on in the United States by persons residing elsewhere, and upon every corporation, joint stock company or association, and every insurance company, with certain exceptions, engaged in business in the United States, and prescribed the method of handling the returns of annual net income filed in compliance with said law as follows:

"(d) When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the Commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such; Provided, That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President; Provided further, That the proper officers of any State imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint-stock company or association or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe."

1650 For the purpose of making effective the legislative intent thus expressed, the President has ordered that such returns shall be open to inspection under the following rules and regulations. The word "corporation" when used alone herein, shall be construed to refer to corporations, joint stock companies of asociations and insurance companies.

1651 1. The return of every individual and of every corporation, joint stock company or association, and every insurance company, whether foreign or domestic, shall be open to the inspection of the proper officers and employees of the Treasury Department. Returns of individuals shall not be subject to inspection by any one except the proper officers and employees of the Treasury Department.

1652 2. Where access to any return of any corporation is desired by an officer or employee of any other department of the Government, an application for permission to inspect such return, setting out the reasons therefor, shall be made in writing, signed by the head of the executive department in which such officer or employee is employed, and transmitted to the Secretary of the Treasury. If the return of a corporation is desired to be used in any legal proceedings other than those to which the United States is a party, or to be used in any manner by which any information contained in the return could be made public, the application for permission to inspect such return or to furnish a certified copy thereof shall be referred to the Attorney General, and if recommended by him transmitted to the Secretary of the Treasury.

1653 3. All returns, whether of persons or of corporations, joint stock companies or associations, or insurance companies, may be furnished, upon approval of the Secretary of the Treasury, for use, either in the original or by certified copies thereof, in any legal proceedings before any United States grand jury or in the trial of any cause to which both the United States and the person or corporation or association rendering the return are parties either as plaintiff or defendant, and in the prosecution or defense or trial of which action, or proceeding before a grand jury, such return would constitute material evidence, but in any case arising in the collection of the income tax, the Commissioner of Internal Revenue may furnish for use to the proper officer either the original or certified copies of returns without the approval of the Secretary of the Treasury. In all cases where the use of the original return is necessary, it shall be placed in evidence by the Commissioner of Internal Revenue or by some other officer of the Bureau of Internal

Revenue designated by him for that purpose, and after such original return has been placed in evidence it shall be returned to the files in the office of the Commissioner of Internal Revenue at Washington, D. C.

1654 4. The Secretary of the Treasury, at his discretion, upon application to him made, setting forth what constitutes a proper showing of cause, may permit inspection of the return, of any corporation, by any bona fide stockholder in such corporation. The person desiring to inspect such return shall make application, in writing, to the Secretary of the Treasury, setting forth the reasons why he should be permitted to make such inspection, and shall attach to his application a certificate signed by the president, or other principal officer, of such corporation, countersigned by the secretary, under the corporate seal of the company, that he is a bona fide stockholder in said company. (Where this certificate cannot be secured, other evidence will be considered by the Secretary of the Treasury to determine the fact whether or not the applicant is a bona fide stockholder and, therefore, entitled to inspect the return made by such company.) Upon receipt of such application the corporation whose return it is desired to inspect shall be notified of the facts and shall be given opportunity to state whether any legitimate reason exists for refusing permission to inspect its returns of annual net income by the stockholder applying for permission to make such inspection. The privilege of inspecting the return of any corporation is personal to the stockholders, and the permission granted by the Secretary to a stockholder to make such inspection cannot be delegated to any other person.

1655 5. Returns of the following corporations shall be open to the inspection of any person upon written application to the Secretary of the Treasury, which application shall set forth briefly and succinctly all facts necessary to enable the Secretary to act upon the request: [See new law provision at ¶1639.]

(a) The returns of all companies whose stock is listed upon any duly organized and recognized stock exchange within the United States, for the purpose of having its shares dealt in by the public generally.

(b) All corporations whose stock is advertised in the press or offered to the public by the corporation itself for sale. In case of doubt as to whether any company falls within the classification above, the person desiring to see such return should make application, supported by advertisements, prospectus, or such other evidence as he may deem proper to establish the fact that the stock of such corporation is offered for general public sale.

1656 Return can be inspected only in the office of the Commissioner of Internal Revenue in Washington, D. C. In no case shall any collector, or any other Internal Revenue officer outside of the Treasury Department in Washington, permit to be inspected any returns or furnish any information whatsoever relative to any return or any information secured by him in his official capacity relating to such return, except in answer to a proper subpoena, in a case to which the United States is a party.

1657 6. Returns of individuals shall not be open to the inspection of any person other than the proper officers and employees of the Treasury Department or person rendering the same, and are under no conditions to be made public, except where such publicity shall result through the use of such returns in any legal proceedings in which the United States is a party.

1658 7. Upon request of the governor of a State imposing a general income tax, the proper officer of such State, to be designated by name and official position by the Governor of such State in his application to the Secretary of the Treasury, may have access to the returns or to abstracts thereof showing the name and income of each corporation, joint stock company or association, or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe. Such application shall be made in writing, addressed to the Secretary of the Treasury and shall show (first) that the State, whose governor makes the request, imposes a general income tax; (second) the name and address of each corporation, etc., to which access is desired; (third) why permission to inspect the returns of the corporation, etc., named in the request is desired, and (fourth) what officer or officers are designated to make the desired inspection, giving their names and official designations. Such request must be signed by the governor of the State and sealed with the seal thereof, and shall be transmitted to the Secretary of the Treasury for his consideration and action thereon. [See new law provision at ¶1638.]

1659 No provision is made in the law for furnishing a copy of any return to any person or corporation, and no copy of any return will be furnished to any other than the person or corporation making the return, or their duly constituted attorney, except as heretobefore authorized.

1660 The provisions herein contained shall be effective on and after the 1st day of September, 1914.

W. G. McAdoo,
Secretary of the Treasury.

Approved:
Woodrow Wilson,
The White House, July 28, 1914.

(T. D. 2016, April 18, 1914.)

1661 Law ¶409. **Annual Report by the Commissioner of Statistical Information.**—"Sec. 258. That the Commissioner, with the approval of the Secretary, shall prepare and publish annually statistics reasonably available with respect to the operation of the income, war-profits and excess-profits tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable." [¶3067]

CORPORATIONS.

1662 Law ¶260. **Tax on Corporations.**—"Sec. 230. (a) That, in lieu of the taxes imposed by section 10 of the Revenue Act of 1916, as amended by the Revenue Act of 1917, and by section 4 of the Revenue Act of 1917, there shall be levied, collected, and paid for each taxable year upon the net income of every corporation"

1663 Law ¶18. **"Taxable Year" Defined.**—"The term 'taxable year' means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under section 212 [¶754] or section 232 [¶1787]".

1664 Law ¶19. **"Fiscal Year" Defined.**—"The term 'fiscal year' means an accounting period of twelve months ending on the last day of any month other than December."

Changing a Corporation's Accounting Period.—[Read at ¶1479.]

1665 Law ¶20. **The First Taxable Year Under the Revenue Act of 1918.**—"The first taxable year, to be called the taxable year 1918, shall be the calendar year 1918 or any fiscal year ending during the calendar year 1918;"

1666 Law ¶60. **Application of the Rates For Fiscal Year Embracing Parts of Calendar Years with Differing Rates.**—"Sec. 205. (a) That if a taxpayer makes return for a fiscal year beginning in 1917 and ending in 1918, his tax under this title for the first taxable year shall be the sum of:"

In connection with the following read beginning at ¶3117].

1667 Law ¶61. "(1) the same proportion of a tax for the entire period computed under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 and under Title I of the Revenue Act of 1917, which the portion of such period falling within the calendar year 1917 is of the entire period, and"

1668 Law ¶62. "(2) the same proportion of a tax for the entire period computed under this title at the rates for the calendar year 1918 which the portion of such period falling within the calendar year 1918 is of the entire period:"

1669 Law ¶63. "*Provided*, That in the case of a personal service corporation the amount to be paid shall be only that specified in clause (1)."

1670 Law ¶64. "Any amount heretofore or hereafter paid on account of the tax imposed for such fiscal year by Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917, and by Title I of the Revenue Act of 1917, shall be credited towards the payment of the tax imposed for such fiscal year by this act, and if the amount so paid exceeds the amount of such tax imposed by this act, or in the case of a personal service corporation, the amount specified in clause (1), the excess shall be credited or refunded in accordance with the provisions of section 252 [¶2488]."

1671 Law ¶65. "(b) If a taxpayer makes a return for a fiscal year beginning in 1918 and ending in 1919, the tax under this title for such fiscal year shall be the sum of:"

1672 Law ¶66. "(1) the same proportion of a tax for the entire period computed under this title at the rates specified for the calendar year 1918 which the portion of such period falling within the calendar year 1918 is of the entire period, and"

1673 Law ¶67. "(2) the same proportion of a tax for the entire period computed under this title at the rates specified for the calendar year 1919 which the portion of such period falling within the calendar year 1919 is of the entire period."

1674 Law ¶68. "(c) If a fiscal year of a partnership begins in 1917 and ends in 1918 or begins in 1918 and ends in 1919, then notwithstanding the provisions of subdivision (b) of section 218 [¶1290],

1675 Law ¶69. "(1) the rates for the calendar year during which such fiscal year begins shall apply to an amount of each partner's share of such partnership net income (determined under the law applicable to such year) equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year, and"

1676 Law ¶70. "(2) the rates for the calendar year during which such fiscal year ends shall apply to an amount of each partner's share of such partnership net income (determined under the law applicable to such calendar year) equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year:"

1677 Law ¶71. "*Provided*, That in the case of a personal service corporation with respect to a fiscal year beginning in 1917 and ending in 1918, the amount specified in clause (1) shall not be subject to normal tax."

1678 Law ¶72. **Parts of Income Subject to Rates for Different Years.**—"Sec. 206. That whenever parts of a taxpayer's income are subject to rates for different calendar years, the part subject to the rates for the most recent calendar year shall be placed in the lower brackets of the rate schedule provided in this title, the part subject to the rates for the next preceding calendar year shall be placed in the next higher brackets of the rate schedule applicable to that year, and so on until the entire net income has been accounted for."

1679 Law ¶73. "In determining the income, any deductions, exemptions or credits of a kind not plainly and properly chargeable against the income taxable at rates for a preceding year shall first be applied against the income subject to rates for the most recent calendar year;"

1680 Law ¶74. "but any balance thereof shall be applied against the income subject to the rates of the next preceding year or years until fully allowed."

[In connection with the above read at ¶3122 and ¶3123.]

1681 Law ¶261. **Tax Rates Applicable to Corporations.**—"a tax at the following rates:"

1682 Law ¶262. **Tax Rates Applicable to Corporations for 1918.**—"(1) For the calendar year 1918, 12 per centum of the amount of the net income in excess of the credits provided in section 236 [¶2325]; and"

1683 Law ¶263. **Tax Rates Applicable to Corporations for Years Subsequent to 1918.**—"(2) For each calendar year thereafter, 10 per centum of such excess amount."

1684 Law ¶264. **Funds From Which Taxes Imposed on Railroads Under Government Control Are To Be Paid.**—"(b) For the purposes of the Act approved March 21, 1918, entitled 'An Act to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes,' five-sixths of the tax imposed by paragraph (1) of subdivision (a) and four-fifths of the tax imposed by paragraph (2) of subdivision (a) shall be treated as levied by an Act in amendment of Title I of the Revenue Act of 1917."

1685 Law ¶3. **What Constitutes a Corporation Under the Income Tax Law.**—"The term 'corporation' includes associations, joint-stock companies, and insurance companies," [The old law read "by every corporation, joint-stock company or association, or insurance company."] [¶3074.]

1686 Law ¶2. **The Term "Person" As Used in the Revenue Act of 1918.**—"The term 'person' includes partnerships and corporations, as well as individuals;" [¶3073.]

1687 **Corporations Defined.**—"Corporation" or "corporations," as used in these regulations, shall be construed to include all corporations, joint-stock companies and associations, and all insurance companies coming within the terms of the law, as well as all business trusts organized or created for the purpose of engaging in commercial or industrial enterprises, the capital of which is evidenced by certificates or shares of interest issued or issuable to members on the basis of which profits are distributed or distributable. Such organizations will be hereinafter referred to as corporations. (Art. 57, ¶299, Reg. 33, Rev., Jan. 2, 1918.)

1688 **Joint-Stock Companies and Associations Defined.**—The term "joint-stock companies" or "associations" shall include associations, common-law trusts, or organizations by whatever name known which carry on or do business in an organized capacity, whether created under and pursuant to State laws, trust agreements, declarations of trust, or otherwise, the net income of which, if any, is distributed or distributable among the

members or shareholders on the basis of the capital stock which each holds, or, where there is no capital stock, on the basis of the proportionate share or capital which each has, or has invested, in the business or property of the organization, all of which joint-stock companies or associations shall in their organized capacity be subject to the tax imposed by this act, and shall make returns of annual net income accordingly. (Art. 58, ¶300, Reg. 33, Rev., Jan. 2, 1918.)

1689 Massachusetts Trusts Held to be Associations.—The appended decision of the United States Circuit Court of Appeals for the First Circuit in the cases of Crocker et al., trustees, v. John F. Malley, collector of internal revenue, and John F. Malley, collector of internal revenue, v. Crocker et al., trustees, is published for the information of internal-revenue officers and others concerned. (T. D. 2720, June 4, 1918.)

John F. Malley, Collector vs. Alvah Crocker, et al., Trustees.
U. S. Circuit Court of Appeals: First Circuit.
May 3, 1918.
(5 Dept. Reports of Mass., 1011.)

[In U. S. Supreme Court. No. 649. October 1918 Term.]

The opinion, written by Judge Dodge, follows, in part:

1690 "These cases arise under the Federal income tax act, approved Oct. 3, 1913 (38 stats. 166, 172).

1691 "The five persons who were then the trustees under a declaration of trust dated March 29, 1912, and recorded in Worcester County, Massachusetts, northern district, registry of deeds, brought suit, on January 15, 1917, against the collector of internal revenue to recover back certain amounts paid by them to him under protest, as income taxes claimed by him to be due from them under said act, for years 1913, 1914 and 1915. The case was heard in the district court without a jury on an agreed statement of facts. The trustees recovered judgment for $9,554.07, with interest; which judgment the collector seeks to reverse in No. 1324, asserting that the allowance of any recovery was error. By their writ of error in No. 1323 the trustees assert the judgment to have been erroneous in not allowing also the further recovery of $1,321.33, included in their total claim as stated in their declaration. Neither party disputes the finding below that all the formalities required by the statute to enable the plaintiffs to bring this suit have been complied with.

1692 "The declaration of trust provided that 'the title of this trust (fixed for convenience) shall be the Wachusett Realty Trust.'

1693 "The district court has stated the question upon which the trustees' right of recovery depends, as follows:

" 'The principal question in the case is whether the plaintiffs are trustees and subject to the tax provisions of section II, subdivision D, of the act of Oct. 3, 1913, or whether they are an association within section II, subdivision G a, of said act. The contention of the defendant is that the plaintiffs are an association and taxable under the provisions of subdivision G, while that of the plaintiffs is that they are a strict trust, not an association or partnership, and are subject to the tax provisions of subdivision D.'

"This question was resolved by the district court in favor of the plaintiffs, and the

1694 case decided upon the ground that they are a trust and not an association.

"The district court, as its opinion states, held the plaintiffs to be 'a trust' subject

1695 to the provision of section II, D, and not 'an association,' in deference to the decisions in Williams v. Milton 215 Mass. 1; Crocker v. Crocker, previously decided in the district court (May 23, 1914), and the authorities whereupon those decisions were based. Crocker v. Crocker required construction by the court of the same trust declaration as is now before us. The bill in that case, filed by one of the beneficiaries, asked the court to enjoin the present plaintiffs from making a return of the income taxable under this statute according to section II, G a, thereof.

"We agree with the district court, in this case in Crocker v. Crocker, that the

1696 organization formed under this trust declaration is not, in view of the authorities referred to, to be regarded as an association in such sense as to make the beneficiaries partners and the plaintiffs their agents for conducting the partnership business. Its income, therefore, for the calendar year in question, is not for the purpose of the statute to be treated as income of a partnership. If it were so treated it would be income arising or accruing to the several partners and subject to the provisions of section II, D, regarding such income. Nor could the organization be regarded as belonging to either of the classes mentioned in section II, G a, because the language there expressly excludes partnership.

"But although their beneficiaries stood, neither as to the trust property, nor as to

1697 the profits of its control and management, nor as to the income therefrom, as partners, but only as beneficiaries of a strict trust; and although the plaintiffs were not the agents or representatives of a partnership, but trustees in whose management and control of the trust property and business the beneficiaries had no direct voice, we do not think it necessarily follows that the organization composed of themselves and the in-

dividuals for whose benefit they act, cannot be called an 'association' for the purpose of section II, G a. Though not associated as partners, we fail to see why they may not reasonably be said to be associated in the sense contemplated by the statute. As pointed out above, the statute, for the purposes of the taxation which it imposes broadly distinguishes between two classes of income only—that which does not arise or accrue to individuals as opposed to groups or bodies of individuals.

"The plaintiffs fail to satisfy us that the terms 'voluntary association,' or 'associ-
1698 ation,' are entirely inapplicable for any purpose to an organization according to whose constitution individuals beneficially interested in various proportions in the same property, commit its control and management, for profit, to trustees free from their own immediate control or interference. However important it may be to distinguish between a trust under which there is no partnership relation among the beneficiaries, and an association under which such relation exists, for the purposes of systems of taxation such as that of Massachusetts (Williams v. Milton, 215 Mass. 1), or for the purpose of statutes such as that construed in Smith v. Anderson, 50 L. J. Ch. 39; it does not seem to us that the distinction so made necessarily excludes an organization like this from the general class of organizations to which the terms 'voluntary association,' or 'association' may be properly applied. The holders of assignable certificates representing the different beneficial interests in this 'trust' may certainly be described, without using language in any extraordinary or unusual sense, as associated together for their common benefit or profit. Their individual interests in the trust property are combined for the purposes of a joint business venture managed for the common benefit of all. The trust declaration in effect associates them for the purposes of allowing extra compensation to the trustees, of filling vacancies in the office of trustees, or of modifying the terms of the declaration itself, when it requires for those purposes written assent from a 'majority in amount' or a 'majority in interest.'

"Believing, in view of the entire scheme for taxation of income as established by
1699 this statute, that the legislative intent as to incomes such as these plaintiffs have received, was to treat them as arising or accruing to the trustees collectively, rather than to the individual beneficiaries for whose ultimate benefit they were received, we are obliged to hold that the taxes for the years here in question were lawfully assessed and collected, and that the district court erred in its decision to the contrary. This conclusion renders it unnecessary to consider the questions which would have had to be decided upon the plaintiffs' writ of error in No. 1323, had we agreed with the district court.

1700 "In No. 1323 the writ of error is dismissed, and the defendant in error recovers his costs of appeal.

1701 "In 1324, the judgment of the district court is reversed, and the case is remanded to that court, with directions to enter judgment for the defendant; and the plaintiff in error recovers his costs of appeal." (5 Dept. Reports of Mass., 1011.) (T. D. 2720, June 4, 1918.)

1702 **Corporations Subject to Tax.**—The tax imposed by the Federal income tax law is not imposed only upon such corporations as are organized and operated for profit. Any corporation, joint-stock company, or association, and any insurance company, no matter how created or organized or what the purposes of its organization may be, unless it comes within the class of organizations specifically enumerated in the act as exempt, will be required to make returns of annual net income and pay income tax upon the net income which arises and accrues to it during the year.

A corporation is not exempt simply and only because it is primarily not organized
1703 and operated for profit. If income within the meaning of the law arises and accrues to a corporation which is not organized and operated for profit, such income will be subject to the tax imposed by this act.

1704 It is therefore held that commercial men's associations, * * * and like organizations come within the requirements of the law. (T. D. 2152, Feb. 12, 1915.)

1705 **Incomplete Corporations.**—Corporations which have applied for but have never received charters and corporations which have received charters but never perfected their organizations and which as entities have transacted no business and had no income whatever from any source may, upon presentation of the facts to the collector, be relieved from the necessity of making returns, so long as they remain in this unorganized condition. In the absence of a showing to this effect to the collector of internal revenue, such companies will be required to make returns and will be liable to the penalties of the law for failure to do so. (Art. 60, ¶303, Reg. 33, Rev., Jan. 2, 1918.)

1706 **Corporations Organized During Tax Year.**—A corporation organized during the year should render a sworn return on the prescribed form, covering that portion of the year (calendar or fiscal) [for fiscal year read paragraph 1472] during which it was engaged in business or had an income accruing to it. (Art. 84, Reg. 33, Jan. 5, 1914.)

1707 A corporation organized and transacting no business within the calendar year of its organziation must, nevertheless, make and file a return on the basis of the calendar year unless such corporation shall designate a fiscal year other than the calendar year in the manner and form as provided for that purpose. (T. D. 2090, Dec. 14, 1914.)

1708 Also in the case of a new corporation making a return for the period from the date of its organization to the close of the calendar year, the tax will be computed on the entire net income so returned. (Art. 82, ¶339, Reg. 33, Rev., Jan. 2, 1918.)

1709 **Corporations in Existence but Part of Year.**—All corporations having an existence as such during all or any portion of a year, unless coming within the classes specifically enumerated as exempt, are required to make returns. Dissolved corporations whose fiscal year coincides with the calendar year will make returns covering the period from January 1 to the date of dissolution, and corporations having a fiscal year other than the calendar year will make returns covering the period from the beginning of the fiscal year to the date of dissolution and new corporations will make return for the period from the date of their organization to December 31. The net income in all such cases will be ascertained in the manner set out in Paragraph G [i. e., the provisions relating to corporations, ¶1787, et seq. herein.] of the act. (T. D. 2090, Dec. 14, 1914.)

Affiliated Corporations.—[Read at ¶1405.]

1710 **Subsidiaries in Name Only.**—If subsidiary corporations exist in name only, or are mere agents or integral parts of the parent corporation and as such, transact no business and have no income of and for their own account, and incur no expenses, all business being transacted, all income being received and all expenses being paid directly by the parent company, no separate accounts being kept by or for such subsidiaries, it will be considered that such subsidiary concerns do not have any taxable income within the meaning of this title, and so long as they are so operated no tax liability will be asserted against them. (Art. 208, ¶617, Reg. 33, Rev., Jan. 2, 1918.)

1711 In such cases, however, such subsidiary corporations will be required to make returns of annual net income, and shall indorse thereon a statement to the effect that the corporation making the return is a subsidiary or integral part of the parent company (naming it) and that, for its own account, it has no income from any source whatever, that it makes no disbursements, and that all the business done in its name is done for the account of and is the business of the parent corporation, and will be accounted for in the return of such parent corporation. (Art. 208, ¶618, Reg. 33, Rev., Jan. 2, 1918.)

1712 If, however, the subsidiary concerns are mere partnerships or branches of the parent company, and not incorporated organizations, then these subsidiary concerns will not be required to make returns of annual net income, but all of their earnings and expenses will be taken up and accounted for in the returns of the parent company or corporation. (T. D. 2161, Feb. 19, 1915.)

1713 **Corporation Formed to Avoid Selling at a Sacrifice in Order to Partition.**—A corporation formed as a family affair to hold property together and not to sacrifice in selling does not come within the class of corporations specifically enumerated as exempt from the requiremetts of the Federal income tax law, and is required to make a return of annual net income showing therein all income arising and accruing to it from all sources and to pay any income tax shown by such return to be due. (T. D. 2137, Jan. 30, 1915.)

1714 **Corporations Owned by Exempt Organizations.**—A stock corporation all of whose stock is owned by "a corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of whose net income inures to the benefit of any member, stockholder, or individual," is required under the provisions of the Federal income tax law to make a return of annual net income and pay income tax.

1715 The fact that all of the stock of the corporation, except shares qualifying the directors, is owned by a corporation which itself comes within the class specifically enumerated as exempt, does not relieve the first-named corporation from liability under the income tax law. The liability of a corporation to the requirements of the Federal income tax law is not contingent upon the ownership of its stock. (T. D. 2137, Jan. 30, 1915.).

1716 **Lessee and Lessor Corporations.**—When a corporation shall have leased its property in consideration that the lessee shall pay in lieu of rental an amount equivalent to a certain rate of dividend on its capital stock or the interest on its outstanding indebtedness, together with taxes, insurance, or other fixed charges, such payments shall be con-

sidered rental payments and shall be returned by the lessor corporations as income, notwithstanding the fact that the dividends and interest are paid by the lessee direct to the stockholders and bondholders of the lessor. The lessee, in making these payments direct to the bondholders and the stockholders, does so as the agent of the lessor, and the latter is none the less liable to return the amounts thus paid as income and to pay any tax that may be due thereon.

The fact that a corporation has conveyed or let its property and has thus parted
1717 with its management and control or has ceased to engage in the business for which it was originally organized will not relieve it from liability to income tax. If it has or may have income directly or indirectly from any source, it must make a return, account for all such income, and pay any tax assessable upon such income. (Art. 102, ¶368-369, Reg. 33, Rev., Jan. 2, 1918.)

1718 A railroad company operating leased or purchased lines as an integral part of its line or system, and keeping no separate books of account as to such leased or purchased line, and the income from the operation of which can not be segregated, shall include in its income all receipts derived therefrom, and if bonded or other indebtedness of the leased or purchased line has been assumed by the operating company, it may deduct from its gross income the interest paid on such indebtedness, provided the interest so paid plus the interest paid on its own indebtedness is not in excess of the limit fixed by the law. In this event the leased or purchased line so long as it has a corporate existence will make return of annual net income setting out that on its own account it has neither income nor expenses, and that both are taken up in the return of the operating company, naming it.

If the leased or purchased line keeps separate books of account, or the income from
1719 its operations is, or can be segregated, or if the lessee or operating company pays it a certain rental, or in lieu of rental pays a certain per cent of dividends on its stock, interest on its bonds, taxes, etc., it (the lessor) will return the same as its income and will be subject to tax accordingly and the lessee or operating company will make its return as though it were in no way related to the leased line. (Art. 125, ¶415-416, Reg. 33, Rev., Jan. 2, 1918.)

1720 The Rensselaer & Saratoga Railroad Company leased its properties to the Delaware and Hudson Company, which agreed to pay the interest upon and discharge the bonds issued by the former, to maintain the right of way and buildings, and to pay direct to each stockholder dividends at the rate of 8% per annum on each share of stock. The lessor received $1,000 per annum from the lessee to enable it to maintain its corporate existence. The lessor maintained that the dividend payments to its stockholders were not income to it and paid income tax assessed thereon to it by the Collector of Internal Revenue under protest. This action was on demurrer to the complaint of the Rensselaer & Saratoga Railroad Company, on the ground that it did not allege facts sufficient to constitute a cause of action. The court sustained the demurrer, saying:

It seems to me clear:

1721 1. That the moneys to be paid by the Delaware & Hudson Canal Company to the creditors and stockholders of the Rensselaer & Saratoga Railroad Company are rents or compensation to the Rensselaer & Saratoga Railroad Company for the use and occupation of its property, and, as the plaintiff corporation pays no operating or repair expenses, constitutes, aside from the interest paid, net income within the meaning of the law in question.

2. It is immaterial, so far as that question is concerned, that such dividends
1722 are fixed as to amount by the lease, and by its terms paid directly to such stockholders.

1723 3. It is also immaterial that the plaintiff corporation is not possessed of money or other cash revenues with which to pay the tax. It has power to borrow.

1724 4. The corporation could not exonerate itself from liability for this tax subsequently imposed under a law thereafter enacted by making a lease of its property which provides for the payment of all its surplus revenues directly to its stockholders.

On the face of the complaint a cause of action is not stated, and the demurrer
1725 is sustained. There will be an order and judgment accordingly. (Rennsselaer & Saratoga Railroad Company vs. Irwin, Collector, District Court, N. D. New York, March 5, 1917—239 Fed. 739—Act of Oct. 3, 1913.) (Affirmed 249 Fed. 726. Writ of certiorari denied by Supreme Court, April 15, 1918.)

1726 I am of the opinion, however, that the West End Street Railway Company was a duly organized and existing corporation under the laws of Massachusetts and had a net income which arose or accrued to it during the period from March 1, to December 31, 1913, within the meaning of the Income Tax Statute of October 3, 1913, (c. 16; 38 Stat., p. 114, 172) and was subject to the imposition of the tax herein authorized. The rental which, under the terms of the lease of its road to the Boston Elevated Railway Company,

was to be paid by the lessee directly to the shareholders of the West End Street Railway Company was income of the West End Company and did not cease to be such because it was not paid directly to it. The Boston Elevated Railway Company, in making the payment to the shareholders, acted in no other capacity than as agent of the West End Company. Anderson v. Morris & Essex R. R. Co., supra; Lewellyn v. Pittsburgh, etc., R. R. Co., 222 Fed. 177; Public Service Ry. Co. v. Herold, 219 Fed. 301. (Opinion by the Court in West End Street Railway Company v. John F. Malley, Collector, U. S. District Court, District of Massachusetts, June 23, 1916.) (Affirmed U. S. Circuit Court of Appeals, First Circuit, 246 Fed. 625. (Writ of certiorari denied by Supreme Court, April 15, 1918.) (T. D. 2620, Dec. 17, 1917.)

1727 Public Utility Corporation Intrusted with Use, Merely, of Property Owned by State. The fact that the plaintiff was a public utilities corporation which, under the laws of the State, was not the owner of the property but merely intrusted with the use thereof which it must devote to the public, does not entitle it to more favorable treatment than other corporations, it being a corporation organized for profit, having a capital stock represented by shares, and the act making no exceptions in favor of public utilities. (Caption: Union Hollywood Water Co. vs. John P. Carter, Collector, case, Act Aug. 5, 1909 (238 Fed. 329). (T. D. 2475, April 4, 1917.)

1728 Liquidating Corporations.—A corporation going into liquidation during any period may, at the time of such liquidation, prepare a "final return" covering the income received or accrued to it during the fractional part of the year during which it was engaged in business, and immediately file the same with the collector of the district in which the corporation has its principal place of business. Before distributing its assets, a dissolving corporation should reserve funds sufficient to pay any income tax assessable against it. Otherwise the tax may be collected by suit against the stockholders. (Art. 205, ¶612, Reg. 33, Rev., Jan. 2, 1918.)

1729 Corporations Dissolving Before the Time for Making Returns.—A corporation which has continued in business through a calendar year cannot evade liability for the special excise tax imposed by Act of August 5, 1919, Section 38, by dissolving before the time when it is required to make a return of said business to the collector of internal revenue and the assessment of the tax.—United States v. General Inspection & Loading Co., 192 Fed. 223.

1730 Under Corporation Act N. J. Sections 53-55, the officers of a dissolved corporation who are also directors have authority to make return to the collector of internal revenue of its business of the preceding year on which it has incurred liability for the special tax imposed by Act of August 5, 1909, Section 38.. Id.

1731 Corporation Dissolved Prior to October 4, 1917.—A corporation which was dissolved in 1917, prior to the passage of the war-revenue act of October 3, 1917, is subject to tax under the act of September 8, 1916, as amended, and also to the war income tax and the war excess profits tax imposed by the act of October 3, 1917 (Brady et al. v. Anderson, 240 Fed. 665). A corporation so situated will make a return on revised Form 1031, covering the period in 1917 during which it was in business prior to its dissolution. If it shall have previously made a return covering this period and shall have paid any excess profits tax under the act of March 3, 1917, it shall be entitled to credit for the amount of such tax so paid against any excess profits tax assessable against it under Title II of the act of October 3, 1917. (Art. 61, ¶304, Reg. 33, Rev., Jan. 2, 1918.)

Status of Partnerships.—[Read at ¶1269 and ¶3077.]

1732 Status of Private Banks.—Private banks which have the form of corporate organizations, elect officers and a board of managers, have a distinctive name, a fixed situs, and distribute their net earnings upon the basis of the amount of capital invested by the members or owners, are held to be associations within the meaning of the Federal income tax law, and in their organized capacity should make returns of annual net income and pay any income tax thereby shown to be due. (T. D. 2137, Jan. 30, 1915.)

1733 The holders of the stock or the owners of the bank will be exempt from the normal tax to the extent of the dividends or earnings which they receive from such private banks as make returns in their organized capacity and pay income tax in accordance therewith. The individual owners of the bank will not be required to return as income for the purpose of the normal tax any dividends or earnings received from the private bank which pays the tax on its net earnings, but for the purpose of the supertax the dividends will be returned as income by the individual stockholders or owners. (T. D. 2137, Jan. 30, 1915.)

1734 The attention of this office has been called to the fact that many private banks, which have an organization similar in form to that of corporations—that is, they have articles of agreement or association, elective officers, and in some instances, boards of managers—have not been called upon by Collectors to make returns of annual net incomes pursuant to the requirements of the Federal income tax law, which provides, in effect, that all corporations, joint stock companies, or associations, and all insurance companies, "no matter how created or organized," shall make returns and pay any income tax thereby shown to be due.

1735 A private bank having a formal organization, a distinctive name and a fixed situs, is held to be an association and, as an organization, comes within the requirements of the income tax law.

1736 Collectors are therefore urged to have all such banks in their respective districts, make formal returns on Form 1031 Revised, and report them for assessment on their Forms * * * . (Mimeograph letter No. 1271 to Collectors, Oct. 19, 1915.)

1737 When it can be clearly shown that a private bank is owned by one man, it is evident that such bank is not an association within the meaning of the Federal income tax law, and that therefore such bank will not be required to make a return such as corporations and associations are required to make, but the individual owner, if he has a net income of $3,000 [$1,000 or $2,000] or more, will be required to make a return on Form 1040, showing in such return the income which he receives not only from the bank but from all other sources. (T. D. 2137, Jan. 30, 1915.)

1738 Private banks which do not have this formal organization [paragraph 1732], but which transact business, not in the name of the bank, but in the name of the individuals who compose the firm, as John Smith & Co., are held to be co-partnerships and, as such, are not required to make returns. In such cases the individuals who compose the firm, if they have net incomes in excess of $3,000 [$1,000 or $2,000], will be required to make individual returns on Form 1040, accounting for therein, their respective incomes arising and accruing from the earnings of the bank. (Mimeograph letter No. 1271 to Collectors, Oct. 19, 1915.)

1739 Law ¶265. **Corporations that are Exempt from Tax.**—"Sec. 231. That the following organizations shall be exempt from taxation under this title—

1740 Law ¶266. (1) Labor, agricultural, or horticultural organizations;

1741 Law ¶267. (2) Mutual savings banks not having a capital stock represented by shares;

1742 Law ¶268. (3) Fraternal beneficiary societies, orders, or associations, (a) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and (b) providing for the payment of life, sick, accident or other benefits to the members of such society, order, or association or their dependents;

1743 Law ¶269. (4) Domestic building and loan associations and cooperative banks without capital stock organized and operated for mutual purposes and without profit;

1744 Law ¶270. (5) Cemetery companies owned and operated exclusively for the benefit of their members;

1745 Law ¶271. (6) Corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual;

1746 Law ¶272. (7) Business leagues, chambers of commerce, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private stockholder or individual;

1747 Law ¶273. (8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare;

1748 Law ¶274. (9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member;

1749 Law ¶275. (10) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local chaaracter, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting expenses;

1750 Law ¶276. (11) Farmers', fruit growers', or like associations, organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;

1751 Law ¶277. (12) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

1752 Law ¶278. (13) Federal land banks and national farm-loan associations as provided in section 26 of the act approved July 17, 1916, entitled "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes";

1753 Law ¶279. (14) Personal service corporations. [For definition see ¶1308 and ¶3083.]

1754 **Proof Necessary to be Filed by Certain Organizations to Establish the Fact that They are Exempt from Filing Income Tax Returns or Paying an Income Tax.**—The exemption from filing returns and paying income tax of corporations or associations organized and operated exclusively for religious, charitable, scientific or educational purposes, business leagues, chambers of commerce, boards of trade, civic leagues, cemetery companies, and pleasure and recreation clubs, under the Act of September 8, 1916, as amended by the Act of October 3, 1917, is conditional.

In order to establish exemption and thus be relieved of the duty of filing returns **1755** and paying income tax, it is necessary that such organizations as are specified hereinbefore file an affidavit with the Collector of Internal Revenue of the District in which they are located, which will show the character of the organization, the purpose for which organized, the source of income and disposition of the same, and whether or not any of its income is credited to surplus or inures or may inure to the benefit of any private stockholder or individual. To such affidavit should be attached a copy of the charter or articles of incorporation and by-laws of the organization.

Upon receipt of the affidavit accompanied by the copies of the charter, or articles of **1756** incorporation and copy of the by-laws by the Collector he will advise the organization whether or not it is exempt. If, however, the Collector is in doubt as to the taxable status of the organization he will refer the affidavit and accompanying papers to the Commissioner of Internal Revenue for decision. (T. D. 2693, April 8, 1918.)

1757 **Conditional.**—Corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes, business leagues, chambers of commerce, boards of trade, civic leagues, cemetery companies, and pleasure and recreation clubs, are not, as such, exempt from the requirements of this title. Their exemption is conditional, and in order to be relieved from liability under the law they must file with the collector of internal revenue an affidavit setting out the character and purpose of the organizations, and showing that no part of any income which they receive inures to the benefit of any private stockholder or individual, and that such income is used exclusively for the promotion of the purposes for which organized as indicated in the particular paragraphs under which exemption is claimed. (Art. 67, ¶312, Reg. 33, Rev., Jan. 2, 1918.)

1758 **Qualifications for Exemption.**—In every instance wherein exemption is conditioned upon the ground that no part of the net income received by corporations inures to the benefit of any private stockholder or individual, it will be necessary, before such organizations will be classed as exempt, for them to show to the satisfaction of the collector or the Commissioner of Internal Revenue:

(1) The character and purpose of the organization;
(2) The source from which all its income is derived;
(3) What disposition is made of such incomes; and
(4) Whether or not any of it is credited to surplus or inures or may inure to the benefit of any private stockholder or individual. (Art. 78, ¶331, Reg. 33, Rev., Jan. 2, 1918.)

1759 **Unconditional.**—Among the corporations exempt from the tax, without condition, are labor, agricultural and horticultural organizations, mutual savings bank not having capital stock represented by shares, fraternal beneficiary society, order, or asso-

ciation operating under the lodge system, or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, domestic building and loan associations, Federal land banks, and national farm loan associations, organized pursuant to the act of July 17, 1916, joint-stock land banks as to income specified in the law, and public utilities whose income inures to the benefit of any State, Territory, or political subdivision thereof.

In all cases wherein the exemption is without condition, and the collector is satisfied
1760 that the organization comes within the exempted class, he will be authorized to eliminate it from his list and relieve it from the necessity of making returns. (Art. 68, ¶313-314, Reg. 33, Rev., Jan. 2, 1918.)

1761 **Organizations whose Exemption is Doubtful.**—Any corporation which entertains any doubt as to its status under the law, for the reason that it does not clearly come within one or another of the classes of those specifically enumerated as exempt, should, within the prescribed time, file a return and attach thereto for the consideration of the collector, a statement setting out fully the nature and purpose of the organization, the source of its income, what disposition is made of it, and particularly of any surplus which it may receive over and above its reasonable needs.

If the collector is in doubt, he will refer the statement and return to the Commis-
1762 sioner of Internal Revenue for decision, and withhold listing for assessment until a decision is reached. (Art. 79, ¶332-333, Reg. 33, Rev., Jan. 2, 1918.)

1763 **Exemption having been Established.**—When a corporation or organization has established its right to exemption under any of the paragraphs of section 11 of this title, it will be unnecessary for it to make a return or to make any further showing thereafter with respect to its status under the law, unless it changes the character of its organization or the purpose for which it was originally created.

Collectors will keep a list of all corporations whose exemption is conditional, to
1764 the end that they may occasionally inquire into their status and ascertain whether or not they are violating the conditions upon which their exemption is predicated. (Art. 80, ¶334-335, Reg. 33, Rev., Jan. 2, 1918.)

1765 **Mutual Insurance Companies, etc.**—The organizations mentioned in paragraph "tenth" of section 11, act of September 8, 1916, as amended, are specifically exempt, provided that their entire income consists *solely* of assessments, dues, and fees collected from members for the *sole* purpose of meeting expenses, incurred in pursuance of the purpose for which organized. If any of such organizations have income from any source other than assessments, dues, and fees, such income will be held to be subject to tax, and the organizations receiving the same will be required to make returns and to pay any tax thereby shown to be due. (Art. 69, ¶316, Reg. 33, Rev., Jan. 2, 1918.)

1766 **Domestic Building and Loan Associations.**—A domestic building and loan association entitled to exemption is one organized under and pursuant to the laws of the United States or under and pursuant to the laws of some State or Territory thereof, and which is actually carrying on for the benefit of its members a building and loan association business in accordance with the laws under which it is organized. The fact that such an association issues fully paid or prepaid shares, calling for a specified rate of interest or dividends, will not disqualify it for exemption. The exemption is without qualification other than that the association is a domestic building and loan association. If a corporation by any other name is carrying on an exclusive building and loan business, before it is entitled to exemption it will be incumbent upon it to show to the satisfaction of the Commissioner of Internal Revenue that it is in fact a building and loan association. (Art. 70, ¶317, Reg. 33, Rev., Jan. 2, 1918.)

1767 **Cemetery Company.**—A cemetery company having a capital stock represented by shares, or which is operated for profit or for the benefit of others than its members, does not come within the exempted class, and will be required to make returns of annual net income and pay any income tax thereby shown to be due.

In the case of such company a reserve set aside out of profits as a "maintenance
1768 fund" is not deductible from gross income, and any accretions to such fund will be held to be income, and, as such, must be returned by the corporation. The expenses of maintenance will be deductible as they are paid. (Art. 71, ¶318-319, Reg. 33, Rev., Jan. 2, 1918.)

1769 **Social Clubs.**—Social clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes are exempt from the tax, provided no part of any net income which they receive inures to the benefit of any private stockholder or individual. This exemption will reach practically all social and recreation clubs which are supported by membership fees, dues, and assessments.

If a club, by reason of the comprehensive powers granted in its charter, engages
1770 in traffic, in agriculture, or horticulture, in the sale of real estate, timber, etc., for profit, it will be held that such club is not organized and operated exclusively for pleasure, recreation, or social purposes. It thus becomes a business or commercial enterprise, and any profit realized from such activities is subject to the tax imposed by this title, and the club so operated must make returns of annual net income. (Art. 72, ¶320–321, Reg. 33, Rev., Jan. 2, 1918.)

1771 **Labor, Agricultural and Horticultural Organizations.**—Agricultural or horticultural organizations, which are exempt under this title, do not include those corporations engaged in growing agricultural or horticultural products, raising live stock or similar products for profit, but will include only those organizations which, having no net income inuring to the benefit of their members, are educational or instructive in character, and which have for their purpose the betterment of the conditions of those engaged in these pursuits, the improvement of the grade of their products, and the encouragement and promotion of those industries to a higher degree of efficiency.

Included in this class as exempt are those organizations such as county fairs and
1772 like associations of a quasi-public character, which, through a system of awards, prizes, or premiums, are designed to encourage the production of better live stock, better agricultural and horticultural products, and whose income, derived from gate receipts, entry fees, donations, etc., is used exclusively to meet the necessary expenses of upkeep and operation.

Societies or associations which have for their purpose the holding of annual or
1773 periodical race meets, and from which profits inure or may inure to the benefit of the members or stockholders do not come within the terms of this exemption. (Art. 73, ¶322–324, Reg. 33, Rev., Jan. 2, 1918.)

1774 Corporations owning sugar or other plantations and disposing of the product thereof are held to be operating for profit and are not entitled to exemption as agricultural organizations. (T. D. 2090, Dec. 14, 1914.)

1775 Corporations engaged in agricultural or horticultural pursuits for profit are liable under the law to make returns and to pay the income tax thereby shown to be due. (T. D. 2090, Dec. 14, 1914.)

1776 **Societies Not Agricultural or Horticultural.**—A corporation engaged in the business of raising stock or poultry, or growing grain, fruits, or other products of this character, as a means of livelihood and for the purpose of gain, is an agricultural or horticultural society only in the sense that its name indicates the kind of business in which it is engaged and, as such, is not exempt from the requirements of the law, and must make returns and pay any income tax thereby shown to be due. (Art. 74, ¶325, Reg. 33, Rev., Jan. 2, 1918.)

1777 **Cooperative Associations Defined.**—Cooperative associations, in order to come within the exemption provided in paragraph "eleventh" must establish to the satisfaction of the collector or Commissioner of Internal Revenue the fact that, for their own account, they have no net income, their business being to market the products of their members, and that the entire proceeds of such marketing, less necessary selling expenses, are turned back or paid to the members on the basis of the quantity of produce furnished by them—quality and grade being considered—as the purchase price of such produce.

If in the course of their business such associations purchase for cash at a stipulated
1778 price articles of produce with a view to selling them for gain, it will be held that such associations are organized for profit and such associations will be required to make returns of annual net income and include therein, for the purpose of the tax, all income derived from such transactions. If amounts paid to members are based solely upon the quantity of produce furnished, such amounts may be deducted from the gross proceeds of sales, and the taxable net income will be the amount of earnings passed to surplus, or distributed or distributable among members on the basis of their stock holdings. (Art. 75, ¶326–327, Reg. 33, Rev., Jan. 2, 1918.)

1779 Fruit-growers' associations whose purpose is to promote the mutual benefit of their members in marketing their products and which are not organized for profit and have no capital stock represented by shares, and whose income is derived wholly from membership fees, dues, and assessments to meet necessary expenses are horticultural societies within the meaning of the law and are not subject to tax or required to make returns. (T. D. 2090, Dec. 14, 1914.)

1780 Co-operative societies, associations or corporations which make a periodical refund —sometimes called a dividend—to member or to prospective members or to patrons generally, in proportion to the purchases made by the recipient, are not within any of the exceptions or exemptions of the Act of September 8, 1916, as amended by the Act of October 3, 1917, and are subject to its provisions.

1781 Where such refund payments are made in accordance with by-laws or published rules regularly adhered to, they are to be regarded as discounts or rebates tending to reduce the taxable net income of the organization. Like discounts generally, they should appear as an added item of cost in the detailed schedule of cost items submitted with the organization's return of income.

1782 This ruling is in accordance with settled practice in the administration of the income tax laws, adopted because the real purpose of such organizations is to furnish goods at cost.

1783 So-called "dividends" of this character are wholly different from ordinary dividends based on stock-holdings, and they need not be listed as income by the recipient. However, if the recipient is claiming the right to deduct as business expenses any expenditure on which the refund is based in whole or in part, the sum claimed as a deduction must be reduced in proportion to the refund received. (T. D. 2737, June 19, 1918.)

1784 **Cooperative Dairy Defined.**—Cooperative dairy companies or associations not having capital stock and engaged in collecting milk and disposing of the same or the products thereof, and distributing the proceeds of the business, less necessary operating expenses, among their patrons, upon the basis of the quantity of butter fat in the milk furnished by such patrons, are held to be exempt from the tax imposed by this title.

1785 If, however, a dairy company purchases milk at a stipulated price and disposes of the same, or its products, through sale or otherwise, at a profit, and such profit inures to the benefit of the company or its members, on any basis other than the butter-fat content of milk furnished, such company will come within the requirements of the law, and will be subject to the tax. (Art. 76, ¶328–329, Reg. 33, Rev., Jan. 2, 1918.)

1786 **Lodge System Defined.**—A society or association "operating under the lodge system" is one organized under a charter or dispensation with properly appointed or elected officers, with an adopted ritual or ceremonial, holding meetings at stated intervals. An order, society, or association coming within this definition is exempt from the requirements of the income tax law. (Art. 77, ¶330, Reg. 33, Rev., Jan. 2, 1918.)

1787 Law ¶280. **Net Income of a Corporation Defined.**—"Sec. 232. That in the case of a corporation subject to the tax imposed by section 230 [¶1662] the term "net income" means the gross income as defined in section 233 [¶1788] less the deductions allowed by section 234 [¶1922], and the net income shall be computed on the same basis as is provided in subdivision (b) of section 212 [¶755] or in section 226 [returns when accounting period is changed, ¶1479]."

1788 Law ¶281. **Gross Income of a Corporation Defined.**—"Sec. 233. (a) That in the case of a corporation subject to the tax imposed by section 230 [¶1662] the term "gross income" means the gross income as defined in section 213 [¶763]," [See ¶2841.]

1789 **Gross Income Defined.**—Gross income embraces not only the operating revenues but also income, gains, or profits from all other sources, such as rentals, royalties, interest, and dividends from stock owned in other corporations; and also profits made in other corporations; and also profits made from the sale of assets, investments, etc. A true and accurate record of all income received, as well as of all disbursements or charges against income, should be kept, in order that it may be identified and verified by an internal-revenue officer if an examination of the books should be deemed advisable. (Art. 88, ¶349, Reg. 33, Rev., Jan. 2, 1918.)

1790 **Banks and Financial Institutions.**—Gross income of banks and other financial institutions consist of the total revenue received within the year for which the return is made from the operation of the business, including income, gains, or profits from the sale of capital assets and from all other sources.

1791 In cases where securities or other assets, real, personal, or mixed, acquired prior to March 1, 1913, are disposed of during the year, the gain or loss thereon will be based upon the difference between the price at which disposed of and the fair market price or value of such assets as of March 1, 1913, or the difference between the price at which disposed of and the *cost* if acquired subsequent to that date. (Art. 90, ¶351–352, Reg. 33, Rev., Jan. 2, 1918.)

1792 **Bank Discounts.**—In cases wherein banks or other corporations loan money by discounting bills or notes, one or two methods shall be used in determining the amount of discount that is to be reported as income, namely (1) if the bank or corporation

makes a practice of crediting such discount directly to a "discount account" or to profit and loss, the total amount thus credited during the year shall be considered income and shall be so reported, regardless of the fact that a portion of this amount may represent discount paid in advance and not then earned; (2) if the bank or corporation follows the practice of crediting such discount to an "unearned discount account," and later, as the discount becomes earned, debits the unearned account and credits an "earned discount account" with the amount so earned, the total amount credited to the "earned discount account" during the year shall be considered income and shall be so returned. The corporation having income of this character should state in a memorandum attached to its return which of the two methods was used in determining the amount of discount returned as income. (Art. 114, ¶385, Reg. 33, Rev., Jan. 2, 1918.)

1793 **Dividends On Federal Reserve Bank Stock.**—The Federal reserve statute, section 3, of the act of October 22, 1914, provides that Federal reserve banks and the capital stock and surplus therein, are exempt from taxation.

Under this provision of law the exemption provided for in the Federal reserve
1794 act attaches to and follows the income derived from dividends on stock of Federal reserve banks into the hands of stockholders, that is to say, the dividends received on the stock of Federal reserve banks are exempt from the taxes imposed by the acts of September 8, 1916, as amended, and of October 3, 1917.

This ruling does not contemplate, however, that dividends paid by member banks
1795 are [not to be included in gross income as provided] by this title, but such dividends in so far as they may be received by other corporations, may be treated as a [deduction] against [gross] income in computing [net income]. (Art. 86, ¶345–347, Reg. 33, Rev., Jan. 2, 1918.) [¶2867.]

1796 **Manufacturing Corporations.**—Gross income for the purpose of returns of manufacturing companies shall consist of the total sales plus the inventory at the end of the year less the sum of the cost of goods or materials purchased during the year and the inventory at the beginning of the year. Instructions as to how inventories shall be taken will be included in special regulations [¶1862] to be furnished upon application to the collector of internal revenue. To the gross manufacturing income should be added the income, including dividends, received from other corporations, and gains or profits from all sources. (Art. 91, ¶353, Reg. 33, Rev., Jan. 2, 1918.)

1797 **Mercantile Corporations.**—For the purpose of returns gross income of mercantile companies shall consist of the total sales plus the inventory at the end of the year less the sum of the cost of goods purchased during the year and the inventory at the beginning of the year. As to method of taking inventory [¶1862], see preceding [¶1796] paragraph. To the amount of income thus ascertained should be added the income, gains, or profits derived from all other sources.

All sales made during the year, whether compensated for by accounts receivable,
1798 bills receivable, cash, or other property at a determined cash value, must be included in gross income of the year in which the sales were made. (Art. 92, ¶354–355, Reg. 33, Rev., Jan. 2, 1918.)

1799 **Miscellaneous Corporations.**—Gross income of miscellaneous corporations consist of total revenue derived from the operation and management of the business and property of the corporation making the return, together with all amounts of income, including the income, gains, or profits from all other sources, including dividends received. (Art. 93, ¶356, Reg. 33, Rev., Jan. 2, 1918.)

1800 **Contracting Corporations.**—Corporations engaged in contracting operations and which have numerous uncompleted contracts, which in some cases run for periods of several years, will be allowed to prepare their returns so that the gross income will be arrived at on the basis of completed work—that is, on jobs which have been finally completed—any and all moneys received in payment for completed jobs will be returned as income for the year in which the work was completed. If the gross income is arrived at by this method, the deduction from gross income should be limited to the expenditures made on account of such completed contracts. [See ¶2843.]

Or the percentage of profit from the contract may be estimated on the basis of per-
1801 centage of completion and payments made thereon, in which case the income to be returned each year during the performance of the contract will be computed upon the basis of the expenses incurred on such contract during the year; that is to say, if one-half of the estimated expenses necessary to the full performance of the contract are incurred during one year, one-half of the gross contract price should be returned as income for that year; all under or over statements of income to be adjusted upon completion the contract and return made accordingly. [See ¶2843.]

In cases wherein contracts are fully performed in one year, although payment
1802 therefor may be deferred until the next, the income resulting from the performance of the contract shall be returned for the year in which it was actually earned and determined. (Art. 121, ¶398–400, Reg. 33, Rev., Jan. 2, 1918.) [See ¶2843.]

1803 **Warrants of City, etc.**—In cases wherein warrants are issued by a city, town, or other political subdivision of a State, and are accepted by the contractor in payment for public work done, the face value of such warrants must be returned as income for the year in which they are received. If, for any reason, the contractor upon conversion of the warrants into cash, does not receive and can not recover the full face value of the warrants so returned, he may allowably deduct from gross income for the year in which the warrants are converted into cash, any loss sustained, which loss will be measured by the difference between the face value of the warrants returned as income and the amount actually received for them in cash, or its equivalent, when redeemed or disposed of. (Art. 108, ¶378, Reg. 33, Rev., Jan. 2, 1918.) [¶2844.]

Farming Corporations.—[Read at ¶913 and at ¶2845.]

1804 **Gross Income of Corporations Conducting More Than One Class of Business.**—Where a corporation is engaged in carrying on more than one class of business, gross income derived from the different classes of business shall be ascertained according to the definitions above, and which are applicable thereto. (Art. 112, Reg. 33, Jan. 5, 1914.)

1805 **Bad Debts Recovered.**—Bad debts or accounts charged off by a corporation because of the fact that they were determined to be worthless, and subsequently recovered, constitute income for the year in which recovered, regardless of the date when the amounts were charged off. Neither the date at which the debt was charged off nor the fact that it was or was not deducted from gross income in any return made for tax purposes, will in any way affect its character as income of the year in which recovered. (Art. 110, ¶380 Reg. 33, Rev., Jan. 2, 1918.)

1806 **Compromise of Indebtedness.**—This office is in receipt of your letter of the 30th ultimo in which you submit for ruling the following proposition:

1807 "A company which has been unable to pay any interest on its bonded indebtedness for some years proposes to settle that indebtedness, part in new securities and part in cash, the creditors to reduce the face of the bonds by $100,000 as an inducement for the raising of $100,000 cash.

"By this process the apparent financial condition of the debtor company is im-
1808 proved by $100,000, not through any earnings, but by effecting a settlement with its creditors by which $200,000 of its bonds are cancelled at a cost to it of $100,000 in cash, namely at 50c on the dollar."

In reply to your inquiry as to whether such a compromise of indebtedness is taxable
1809 as income, you are informed that while in fact the earnings of the corporation are in no wise increased by this compromise, the liabilities are reduced and to that extent the corporation gains in its net worth.

In somewhat similar cases to this, in which the creditor has forgiven the debt
1810 of the debtor, this office has held that the amount of the debt forgiven constitutes income. *In this particular case*, in the opinion of this office, the difference between the amount realized by the corporation when the bonds were sold and the amount which it now is required to pay upon the redemption of the same, constitutes income which income may be prorated over the period elapsing between the date of the bond issue and the date of their payment, and that portion of such income apportioned to the years subsequent to January 1, 1909, will be returned as taxable income for the year in which the bonds are redeemed. (Letter signed by Commissioner W. H. Osborn, and dated July 10, 1915.)

1811 [The Circuit Court of Appeals, Second Circuit, held in U. S. vs. Oregon-Washington R. & Nav. Co., April 24, 1918 (251 Fed. 211), that a debt forgiven is not income to the debtor. (Page 665, 1918 Income Tax Service.)]

1812 **Prevailing Rates of Exchange at Time Income on Foreign Investments was Credited to Govern in Computing Tax Liability on Such Income.**—This office acknowledges receipt of your letter of January 4, 1916, wherein you cite the case of a resident American citizen who had accruing to him from time to time income from foreign investments which was not remitted to the United States but was placed to his credit in different foreign countries, and request to be advised whether in computing income tax liability it will be proper to use the rates of exchange prevailing at the time the amounts were credited abroad.

In reply you are advised that, in the case cited, it will be proper for the individual
1813 to return each item of income at the rate of exchange which prevailed on the date it was credited to his account. (Letter to Herbert M. Teets, New York, N. Y., signed by Deputy Commissioner L. F. Speer, and dated January 11, 1916.)

1814 **Sinking Funds Invested in Bonds of Corporation.**—If the trustees of a sinking fund established by a corporation have invested the amount of the sinking fund reserve or any portion of it in the bonds of the corporation and such corporation pays to the trustees the interest on these bonds, such corporation will be permitted to deduct such interest from its gross income, provided the amount of the interest thus paid, plus the interest on any other outstanding indebtedness which it may have, does not exceed the limit fixed by law. The interest paid to the trustees, together with all other earnings on investments made by the trustees of the sinking fund, must be included in the gross income of the corporation. (Art. 189, ¶577, Reg. 33, Rev., Jan. 2, 1918.)

1815 **Sale of Patents.**—A corporation disposing of patents by sale, should determine the profit or loss arising therefrom, by computing the difference between the selling price and the cost, or value as of March 1, 1913, if acquired before that date. The apparent profit or loss should be increased or decreased, as the case may be, by the amounts deducted since March 1, 1913, as a return of capital invested in such patents. (Art. 109, ¶379, Reg. 33, Rev., Jan. 2, 1918.) [¶2847.]

1816 **Royalties from Patent Rights.**—[Read ¶889.] Royalties received by a corporation in accordance with a contract by which it has assigned the patent rights to manufacture machines, etc., are income and should be so accounted for. The owner of the patent may deduct from gross income each year, until the capital invested therein is extinguished a sum ascertained by dividing the cost of the patent by the number of years constituting its life or by a number representing the years of its life remaining after the date of acquirement. (Art. 113, ¶384, Reg. 33, Rev., Jan. 2, 1918.)

1817 **Royalties from Mines.**—In the case of mines operated by a lessee on a royalty basis it is held that the lessor in disposing of his ores or natural deposits on the basis of royalties has a measure of profit in every ton of ore disposed of in this way, and that so much of the gross receipts on account of royalties as is in excess of depletion, * * * plus any incidental expenses to which the corporation may be subject, is income within the meaning of the Federal income tax law and should be so returned by the lessor. (T. D, 2152, Feb. 12, 1915.)

1818 [It was so held under Act of Aug. 5, 1909, in the Sargent Land Company Case by the Supreme Court, June 15, 1917, (252 U. S. 503) (T. D. 2436) (Page 220, 1918 Income Tax Service).]

1819 **Interest Received and Paid by Brokers in Connection with Purchase and Carrying of Securities for Customers.**—The appended decision [captions only] of the United States Circuit Court of Appeals, in the case of Altheimer & Rawlings Investment Co. v. Allen, collector, is published for the information of internal-revenue officers and others concerned.

(U. S. Circuit Court of Appeals, Eighth Circuit. 248 Fed. 688.)

1. **Gross Income.** A corporation which did a brokerage business and bought
1820 securities for its customers, who paid only a part of the purchase price, paying interest on balances, the corporation also paying for the securities purchased only part of the purchase price and owing balances on which it paid interest, including in return of gross income the difference between the interest received and the interest paid, made incorrect return.

2. **Interest.** The interest received by plaintiff from its customers should be
1821 included in gross income. In determining net income, interest can be deducted only to an amount not exceeding the paid-up capital stock outstanding at the close of the year.

3. **Judgment Affirmed.** The judgment of the United States District Court
1822 (246 Fed., 270; T. D. 2441) is affirmed. (248 Fed. 688.) (T. D. 2686, April 1, 1918.)

1823 **Interest Allowed on Advance Payments of Income and Excess Profits Tax during 1918.**—Treasury Decision 2622, dated December 26, 1917, is amended by the revocation of the following paragraph:

"The interest at the rate of 3% per annum (365 days), allowed to a taxpayer on advance payments on income and excess profits taxes, must be considered income and accounted for as income by the taxpayer in his return for the year in which said interest is allowed." (T. D. 2695, April 11, 1918.)

1824 **Interest Received from Tax-free Bonds.**—The law requires the debtor corporation to deduct one normal tax from the interest on bonds containing a tax-free covenant, and to account for same. Interest received by a corporation or indivudial on bonds held, whether they are guaranteed to be tax-free or not, must be included in the income of the corporation or individual receiving the same and must be so accounted for in the return of annual net income.

The matter of complying with the covenant of the bond is a matter to be adjusted
1825 between the debtor corporation and the bondholder.

If, however, it is clearly established by affidavit or otherwise that the debtor cor-
1826 poration has actually withheld and paid to the proper officers of the United States the tax on such interest income, the recipient, having returned such interest as income, may take credit against any tax to which subject on the basis of return, for the tax so paid by the debtor corporation. (Art. 122, ¶401-403, Reg. 33, Rev., Jan. 2, 1918.)

1827 **Discount for Cash in Relation to Income and Capital Account.**—Reference is made to your letter of the 15th instant, in which you state that a corporation has purchased a large quantity of equipment and in consideration of making a prompt payment therefor has been allowed a cash discount. You ask to be advised whether or not this discount should be reported as income. ¶In reply you are informed that the discount allowed to the corporation purchasing this new equipment need not be reported as income, but the cost of the equipment as charged to capital must represent only the net cost after making allowance for the discount in question. (Letter to E. G. Shorrock & Co., Seattle, Washington, signed by Deputy Commissioner L. F. Speer, and dated November 26, 1918.)

1828 **Proceeds of Sale of Rights Income.**—In cases wherein corporations desiring to secure additional capital propose to issue and sell further shares of stock, reserving to their stockholders the right to subscribe for, at par or any other stipulated price, a certain number of shares of the new stock issue, proportioned to the number previously held, and if such stockholders shall sell their rights, it will be held that the proceeds of such sale are in their entirety income for the year in which the rights are sold, and should be so returned by the stockholders, whether they be individuals or corporations. (Art. 95, ¶359, Reg. 33, Rev., Jan. 2, 1918.)

1829 **Sale of Rights.**—Amount realized from sale of rights to subscribe to stock is held to be income to the seller. (Art. 4, ¶61, Reg. 33, Rev., Jan. 2, 1918.)

1830 **Sale of Capital Stock.**—The proceeds from the sale by a corporation of its shares of capital stock, whether such proceeds be in excess of or less than the par value of the stock subscribed for and issued, constitute the capital of the company.

If the stock is sold at a premium, the premium is not income. Likewise, if the stock
1831 is sold at a discount, the amount of the discount is not a loss deductible from operating income. (Art. 97, ¶361-362, Reg. 33, Rev., Jan. 2, 1918.)

1832 **Treasury Stock—When Taxable.**—Treasury stock, wherever and whenever that term is used in connection with the accounts of the corporation or for income-tax purposes, will be held to mean stock which had been previously issued by the corporation and which had been repossessed by it through purchase or otherwise and then carried on its books as an asset. If such stock is resold at a price in excess of its cost upon repossession, such excess shall be returned as income for the year in which resold. Unissued stock, which had been retained by the corporation for the purpose of future sale, will not, for the purpose of the income tax, be considered "Treasury stock," and when sold no part of the proceeds of such sale will be considered taxable income. Nor will there be any deductible loss if such stock is sold at a price less than par. (Art. 98, ¶363, Reg. 33, Rev., Jan. 2, 1918.)

1833 **Donations to Corporations of Capital Stock.**—If, for the purpose of enabling a corporation to secure working capital or for any other purpose, the stockholders donate or return to the corporation to be resold by it certain shares of stock of the company previously issued to them, the sale of such stock will be considered a capital transaction, and the proceeds of such sale will be treated as capital and will not constitute income to the corporation. (Art. 99, ¶364, Reg. 33, Rev., Jan. 2, 1918.)

1834 **Voluntary Payments by Stockholders.**—In cases wherein a corporation requires additional funds for conducting its business and obtains such needed money through voluntary pro rata payments by its stockholders, and such amounts received are credited to its surplus account or to a special capital account, the amounts so received will not be considered income, although, as representing this additional fund, there is no increase in outstanding shares of stock or liability of the corporation. The payments under such circumstances are in the nature of voluntary assessments upon, and represent an additional price paid for, the shares of stock held by the individual stockholders, and will be treated as an addition to and as a part of the operating capital of the company. (Art. 96, ¶360, Reg. 33, Rev., Jan. 2, 1918.)

1835 Dividends Received.—Section 10 of this title specifically sets out that corporations shall return as gross income all income received from all sources during the year for which the return is made. Among the items to be included in income are dividends on stock and interest on bonds or other interest-bearing obligations received from other corporations. Such dividends are, however, not subject to the * * * income tax * * * . [For "Dividends as a Deduction," read at ¶2102.] (Art, 105, ¶372, Reg. 38, Rev., Jan. 2, 1918.)

1836 Payments Made by Lessee Direct to Bondholders or Stockholders of Lessor.—While the payments made by the lessee direct to the bondholders or stockholders are rentals to both it and the lessor, rentals paid in one case and rentals received in the other, to the bondholders and the stockholders they are interest and dividend payments received as from the lessor, and as such will be accounted for in their returns of annual net income. (Art. 103, ¶370, Reg. 33, Rev., Jan. 2, 1918.)

1837 Payments Made to Holders of Stock Trust Certificates.—Stock trust certificates or leased line certificates, as the case may be, issued by the lessee for the purpose of securing or holding control of the stock of the lessor are held to be issued in lieu of the certificates of capital stock, and for the purpose of this tax will be treated as capital stock and the amounts received by the holders of these certificates are dividends to the holders to be treated as rentals by both lessee and lessor and constitute an allowable deduction in the one case and an item of income in the other, accordingly as they are paid and received. (Art. 104, ¶371, Reg. 33, Rev., Jan. 2, 1918.)

1838 Income from Damages Recovered.—[Read ¶1840 below.] When a corporation as a result of suit or otherwise secures payment for damages which it may have sustained, and the amount of such payment is in excess of an amount necessary to make good the damage or damaged property, the amount of such excess shall be considered and returned as income for the year in which received. If the entire or an estimated amount of the damage shall have been previously charged off and deducted from gross income, then the amount recovered shall be returned as income.

1839 If the amount recovered is less than the damage sustained or less than an amount necessary to make good the damage, the difference between the actual amount of damage sustained and the amount recovered will be deductible as a loss. (Art. 94, ¶357–358, Reg. 33, Rev., Jan. 2, 1918.)

1840 Compensation for Property Requisitioned or Lost or Destroyed Through War Hazards; Replacement Fund; Taxation Deferred.—[Read at ¶2861.] Regulations No. 33 Revised provided in Article 94]¶1838] as follows:

"Art. 94. Income from damages recovered.—When a corporation as a result of suit or otherwise secured payment for damages which it may have sustained, and the amount of such payment is in excess of an amount necessary to make good the damage or damaged property, the amount of such excess shall be considered and returned as income for the year in which received. If the entire or an estimated amount of the damage shall have been previously charged off and deducted from gross income, then the amount recovered shall be returned as income.

"If the amount recovered is less than the damage sustained or less than an amount necessary to make good the damage, the difference between the actual amount of damage sustained and the amount recovered will be deductible as a loss."

1841 In the case of property, title to which has been requisitioned for war uses, or property which has been lost or destroyed in whole or in part through war hazards, the amount received by the owner as compensation for the property may show an excess over the value of the property on March 1, 1913, or over its cost if it was acquired after that date. This excess of the amount received over the value or cost of the property except as far as actually used for the replacement of the property in kind, is subject to the income, war income and excess profits taxes.

1842 Although the intention or obligation of the taxpayer in such case may be to use the entire sum received as compensation for the replacement in kind of the lost or damaged property, it is recognized that it may not be practicable, owing to war conditions, to make such replacement for a considerable time. In such case, the taxpayer may establish a "replacement fund" in which the entire amount of the compensation so received shall be held, and pending the disposition thereof, the accounting for gain or loss thereupon may be deferred for a reasonable period of time to be determined by the Commissioner of Internal Revenue. Where the property requisitioned, lost or damaged constituted all or part of the security under a mortgage or trust indenture, the amount carried to the replacement fund may, subject to the approval of the Commissioner of Internal Revenue, be the amount of compensation received less the amount, if any, which becomes payable out of such compensation under the terms of such instrument or the obligations thereby secured.

In any such case the taxpayer should make application to the Commissioner of
1843 Internal Revenue for permission to establish such replacement fund and in his application should recite all the facts relating to the transaction and undertake that he will proceed as expeditiously as possible to replace or restore such property and an affidavit as to the truthfulness of the statements made should be attached to the application.

The taxpayer will be required to furnish a bond with such security or surety as
1844 the Commissioner of Internal Revenue may require for an amount not less than the estimated additional excess profits and income taxes assessable by the United States upon the income so carried to the replacement fund; or at the option of the taxpayer and in lieu of such bond the taxpayer may deposit, as security for such estimated additional amount of tax, obligations of the United States issued after September 1, 1917, such obligations to be held in trust as such security under such agreement as may be prescribed by the Commissioner of Internal Revenue, in a bank or trust company approved by him.

In any such case, when the replacement or restoration is made the new or restored
1845 property shall not be valued in the accounts of the taxpaper at an amount in excess of that at which the requisitioned, damaged, or destroyed property was carried, except and to the extent that such new or restored property has an increased productive capacity.

Article 94 of Regulations No. 33 (Revised) as hereby modified shall apply to
1846 individuals and partnerships as well as to corporations. (T. D. 2706, April 25 1918.)

1847 **Form for Instruments Required Under Above Regulation.**—The following form is prescribed to facilitate compliance with T. D. 2706 [¶1840] regarding the establishment of a replacement fund in the case of property requisitioned for war uses or lost or destroyed in whole or in part through war hazards:

1848 Form 1114. U. S. Internal Revenue.

INCOME AND EXCESS PROFITS TAXES.

APPLICATION UNDER T. D. 2706 FOR PERMISSION TO ESTABLISH A REPLACEMENT FUND.

To the Commissioner of Internal Revenue:

1. The undersigned (individual) (partnership) (corporation) represents that as a result of suit or otherwise he has secured payment by way of damages or compensation for property title to which has been requisitioned for war uses, or property which has been lost or destroyed in whole or in part through war hazards, to an amount in excess of the value of the property on March 1, 1913, or of its cost if acquired after that date, and that he desires and intends to use the entire sum received as compensation for the replacement in kind of the lost or damaged property.

2. It being impracticable owing to war conditions to make such a replacement for a considerable time, the undersigned hereby makes application for permission to establish a replacement fund in which the entire amount of the compensation so received will be held (unless the property requisitioned, lost or damaged, constituted all or part of the security under a mortgage or trust indenture, in which event the amount carried to the replacement fund will, subject to the approval of the Commissioner of Internal Revenue, be the amount of compensation received, less the amount, if any, which becomes payable out of such compensation under the terms of such instrument or the obligations thereby secured).

3. Attached hereto as Schedule A and made a part hereof is a statement reciting all the facts relating to the transaction, including the nature of the property, the character and extent of the loss, the manner and date of securing compensation, the date of acquisition of the property and its cost or fair value on March 1, 1913, the amount of compensation, the amount necessary to make the damage good, a description of the replacement intended and the steps already taken to that end, the probable date of completion, the estimated additional excess profits and income taxes assessable upon the income carried to the replacement fund, and all other matters which might affect a determination.

4. The undersigned (a) has executed and will cause to be executed by a surety company in good standing the bond hereto annexed as Schedule B in an amount not less than the estimated additional excess profits and income taxes assessable by the United States upon income carried to the replacement fund, or (b) has executed the agreement hereto annexed as Schedule C and will deposit as security for such estimated additional amount of tax obligations of the United States issued after September 1, 1917, to at least an equal amount, to be held in trust as such security in a bank or trust company approved by the Commissioner of Internal Revenue.

5. The undersigned undertakes that he will proceed as expeditiously as possible to replace or restore such property, and covenants that when the replacement or restoration is made, the new or restored property will not be valued in his accounts at an amount in excess of that at which the requisitioned, damaged or destroyed property was carried, except and to the extent that such new or restored property has an increased productive capacity.

IN WITNESS WHEREOF the undersigned individual has hereunto set his hand and seal, or the undersigned partnership has executed this instrument under the hand and seal of one of its members, or the undersigned corporation has caused these presents to be subscribed by one of its officers and its corporate seal to be hereunto affixed, all the..... day of ....., 19.., in triplicate.

.....(L. S.)
.....(L. S.)

State of.....}
County of.....}ss:

....., being duly sworn, deposes and says that he is the individual applicant above-named, or is a member of the partnership above-named, or is an officer of the corporation above-named, and that the statements made in the foregoing application are true to the best of deponent's knowledge, information and belief.

Subscribed and sworn to
before me..... } .....
.....
.....

1849 Schedule A.

STATEMENT OF FACTS.

Name of applicant.....
Address.....
Business.....
Nature of property involved.....
.....
How requisitioned, lost or destroyed.....
.....
.....
How compensation secured.....
.....
Date of receipt of payment.....
Date of acquisition of property.....
Cost (or fair value on March 1, 1913)..... $.....
Amount of compensation..... $.....
Excess over cost or value on March 1, 1913..... $.....
Amount necessary to make damage good..... $.....
Nature of replacement intended.....
.....
Steps already taken.....
.....
Probable date of completion of replacement.....
Amount deductible from replacement fund pursuant to any mortgage..... $.....
Estimated additional excess profits tax..... $.....
Estimated additional income tax..... $.....
Surety on bond or bank for deposit of securities.....
.....

1850 Schedule B.

BOND.

KNOW ALL MEN BY THESE PRESENTS that ....., as principal, and ....., as surety, are held and firmly bound unto the United States of America in the sum of ..... dollars, lawful money of the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS the above-bounden principal has made application to the Commissioner of Internal Revenue for permission to establish a replacement fund pursuant to Treasury Decision 2706 of April 25, 1918, and it appears that the amount of this bond is not less than the estimated additional excess profits and income taxes assessable by the United States upon the income to be carried to the replacement fund;

NOW, THEREFORE, the condition of the foregoing obligation is such that if the principal shall either dispose of said replacement fund as specified in said application and

complete said replacement on or before the final date set in the permit granted by the Commissioner of Internal Revenue, or account for and pay the additional excess profits and income taxes assessable upon the income so carried to the replacement fund at the rate of tax in force at the time of the original receipt of such income, and shall otherwise well and truly perform and observe all the covenants and conditions contained in the instruments annexed and hereto and all the provisions of law and the regulations, then this obligation is to be void, but otherwise to remain in full force and virtue.

WITNESS our hands and seals in triplicate this ..... day of ..... 19..

Signed, sealed and delivered in the presence of ..... (L. S.)
..... (L. S.)
Principal.
.... (L. S.)
.... (L. S.)
Surety.

BOND APPROVED this ..... day of ....., 19....

.....
Commissioner of Internal Revenue.

1851 Schedule C.

DEPOSIT AGREEMENT.

AN AGREEMENT between ..... of ....., party of the first part, and ....., a corporation of the State of ....., party of the second part.

WHEREAS the party of the first part has made application to the Commissioner of Internal Revenue for permission to establish a replacement fund under Treasury Decision 2706 of April 25, 1918, in accordance with the instrument hereto annexed, and has elected in lieu of a bond to deposit as security for the estimated additional excess profits and income taxes assessable by the United States upon the income to be carried to the replacement fund obligations of the United States issued after September 1, 1917:

NOW, THEREFORE, in consideration of a valuable consideration to each of the parties hereto in hand paid by the other, the receipt whereof is hereby acknowledged, it is covenanted and agreed as follows:

1. The party of the first part has deposited with the party of the second part obligations of the United States issued after September 1, 1917, for a principal amount not less than the estimated taxes aforesaid, in bearer form or with transfer power attached, described as follows:

No.	Name	Denomination	Total
.....	.....	$.....	$.....
.....	.....	$.....	$.....
.....	.....	$.....	$.....
Aggregate total..	.....		$.....

2. Such obligations are to be held in trust by the party of the second part as security for the payment of the additional excess profits and income taxes assessable by the United States upon the income carried to said replacement fund at the rate of tax in force at the time of the original receipt of such income; provided the party of the first part shall not dispose of said replacement fund as specified in said application and complete said replacement on or before the final dates set in the permit hereto annexed granted by the Commissioner of Internal Revenue.

3. If on or before the date set in said permit said replacement shall be completed, as evidenced by an acknowledgment in writing to such effect signed by the Commissioner of Internal Revenue, the party of the second part shall thereupon surrender said obligations to the party of the first part or upon his order, and the receipt therefor of the party of the first part shall constitute full satisfaction and discharge of any liability of the party of the second part hereunder. The Commissioner of Internal Revenue may similarly at any time and from time to time authorize the surrender of such portion of said obligations as in his judgment the progress of said replacement shall justify.

4. If on the date set in said permit the party of the second part shall not have received such final written acknowledgment from the Commissioner of Internal Revenue, it shall hold and deliver said obligations, or the remainder of them, in all respects subject to the order of the Commissioner of Internal Revenue, and at his direction shall proceed to sell said obligations at public or private sale, with or without notice thereof, and shall apply the proceeds thereof to the payment of said taxes and any other taxes due from the party of the first part, and interest, penalties and expenses of the sale, paying the residue, if any, to the party of the first part. After said date the receipt of the Commissioner of Internal Revenue shall constitute full satisfaction and discharge of any liability of the party of the second part hereunder.

5. The party of the second part accepts the trust hereunder and acknowledges the receipt and deposit of said obligations.

WITNESS our hands and seals in triplicate this .....day of....., 19..

.....(L. S.)

Signed, sealed and .....(L. S.)
delivered in the .....(L. S.)
presence of .....(L. S.)
....(L. S.)
....(L. S.)

AGREEMENT APPROVED this ..... day of ....., 19....

.....
Commissioner of Internal Revenue.

PERMIT TO ESTABLISH REPLACEMENT FUND.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.,....., 19....

UPON the application and schedules hereto annexed the Commissioner of Internal Revenue hereby grants permission to establish a replacement fund pursuant thereto, and directs that pending the disposition of the amount held therein the accounting for gain or loss thereupon may be deferred for the period of time ending ....., 19...., or such further date as he may determine to be reasonable and endorse hereupon. This permit, however, is expressly conditioned upon the applicant forthwith furnishing a bond in the prescribed form approved by the Commissioner of Internal Revenue, or executing an agreement in the prescribed form and depositing subject thereto obligations of the United States issued after September 1, 1917, in an amount and in a bank or trust company approved by the Commissioner of Internal Revenue.

.....
Commissioner of Internal Revenue.

1852 INSTRUCTIONS

1. The applicant should execute the form of application in triplicate and fill out Schedule A. He should also attach to Schedule A a statement of any other special features of the situation which might help the Commissioner in arriving at a decision.

2. The applicant should execute the bond (Schedule B) or the deposit agreement (Schedule C) in triplicate, inserting the amount and indicating the surety or bank proposed.

3. The applicant should then forward all three copies of the for n to the Commissioner of Internal Revenue, who will consider the application and if he grants it will sign the permit and return the form of the applicant.

4. The applicant should then forthwith procure the completion of the bond or deposit agreement in triplicate and submit it for approval by the Commissioner, which must be given before the permit will become effective. (T. D. 2733, June 17, 1918.)

1853 **Depositaries and Sureties Acceptable under Above Regulations.**—To facilitate compliance with the provisions of T. D. 2706 [¶1840] of April 25, 1918, which permits the establishment of a replacement fund in the case of property requisitioned for war uses or lost or destroyed in whole or in part through war hazards, applicants are notified that only active depositaries of public moneys and surety companies holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds will be approved as sureties or depositaries under Schedules B and C of Form 114, prescribed by T. D. 2733 [¶1850 and ¶1851] of June 17, 1918. (T. D. 2755, August 26, 1918.)

1854 Law ¶43. **Basis For Determining Gain or Loss.**—"Sec. 202. (a) That for the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition of property, real, personal, or mixed, the basis shall be—" [¶3102.]

1855 Law ¶44. **Basis For Determining Gain or Loss in the Case of Property Acquired Prior to March 1, 1913.**—"(1) In the case of property acquired before March 1, 1913, the fair market price or value of such property as of that date; and" [¶3102.]

1856 **Method of Determining Value as of March 1, 1913.**—No method of determining this value can be stated by the department which will adequately meet all circumstances. What that value was is a question of fact to be established by any evidence which will reasonably and adequately make it appear. (Art. 4, ¶63, Reg. 33, Rev., Jan. 2, 1918.)

1857 **Determination, in the Case of Stock, of "Fair Market Price or Value" as of March 1, 1913.**—This office is in receipt of your letter of November 20, 1916, in matter of computing gain or loss on sale of property acquired prior to March 1, 1913, and asking whether

"In case of the sale of stock traded in on the exchange, shall the opening price on

March 1st, or the closing price, or the average price for the day, be taken as the basis?"

Under paragraph (c) of Section 2 and paragraph (4) of Section 5, Act of September
1858 8, 1916, in case of property acquired prior to March 1, 1913, "the fair market price or value of such property as of *March* 1, 1913, shall be the basis for determining the amount of gain or loss" upon sale or other disposition of the property.

"The fair market price or value as of March 1" is held to be the fair market price
1859 or value as of the entire day of March 1, which, in the case of variation between "opening and closing price" for the day, would mean the average price for the day. This, however, would be conditioned upon showing that the *exchange quotation* represented the fair market price or value of the stock, as it is this "fair market price or value" which is to control, however that fact may be ascertained. (Letter to The Corporation Trust Company, signed by Commissioner W. H. Osborn, and dated November 21, 1916.)

1860 Law ¶45. **Basis For Determining Gain or Loss in the Case of Property Acquired Subsequent to March 1, 1913.**—"(2) In the case of property acquired on or after that date [March 1, 1913], the cost thereof; or the inventory value, if the inventory is made in accordance with section 203 [¶1861]." [¶3102.]

1861 Law ¶50. **Inventories.**—"Sec. 203. That whenever in the opinion of the Commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income." [For "Inventories" in Reg. No. 45, see ¶3109.]

[Heretofore there has been no specific reference to inventories in the law.]

1862 1. For the purposes of income and excess profits tax returns, inventories of merchandise, etc., and of securities, will be subject to the following rules:

1863 A. Inventories of supplies, raw materials, work in process of production and unsold merchandise, must be taken either (a) at cost, or (b) at cost or market price whichever is lower; provided that the method adopted must be adhered to in subsequent years unless another be authorized by the Commissioner of Internal Revenue.

B. A dealer in securities who in his books of account regularly inventories unsold
1864 securities on hand either (a) at cost, or (b) at cost or market price whichever is lower, may for purposes of income and excess-profits taxes make his return upon the basis upon which his accounts are kept; provided that a description of the method employed shall be included in or attached to the return, that all the securities must be inventoried by the same method, and that such method must be adhered to in subsequent years unless another be authorized by the Commissioner of Internal Revenue.

C. Gain or loss resulting from the sale or disposition of assets inventoried as
1865 above must be computed as the difference between the inventory value and the price or value at which sold or disposed of.

1866 2. In all other cases inventories must be taken at cost or at value as of March 1, 1913, as the case may be. (T. D. 2609, Dec. 19, 1917.)

1867 T. D. 2609 [¶1862], issued under date of December 19, 1917, authorizes dealers in merchandise and dealers in securities to make their income-tax and excess-profits tax returns upon the basis of inventories taken "at cost or at market price, whichever is lower."

The legality of this authorization having been questioned, the matter was referred
1868 to the Attorney General, who advises that the general principle at issue is involved in cases pending in the Supreme Court of the United States and that an early decision may be reasonably expected. Pending this decision [¶1871] returns made upon the basis of T. D. 2609 will be tentatively accepted.

If the ruling of the Attorney General should be adverse to the principle enunciated
1869 in the Treasury decision referred to, dealers in merchandise or in securities who shall have made returns on the basis of inventories taken at a value other than cost will be required to make amended returns upon the basis of inventories taken at cost. In making their returns in the first instance, for the taxable year 1917, dealers in merchandise or in securities will be required to indorse upon or attach to such returns a statement specifying the basis upon which the inventories were taken, whether at cost or market price.

For the purposes of T. D. 2609 and this decision, a dealer in securities is a mer-
1870 chant of securities, whether an individual, partnership, or corporation, with an established place of business and whose principal business is the purchase of securities and their resale to customers, that is, one who, as a merchant, buys securities and

sells them to customers with a view to the gains and profits that may be derived therefrom. Taxpayers who buy and sell or hold securities for investment or speculation, and not in the course of an established business, officers of corporations or members of partnerships who in their individual capacities buy and sell securities are not "dealers in securities" within the meaning and purpose of T. D. 2609 or this decision, and in all such latter cases inventories, if taken, must be taken at cost and the gain or loss will be determined and taken into account as the securities are sold and the transactions closed. (T. D. 2649, Feb. 16, 1918.)

1871 A question had arisen as to the legality of the authorization by Treasury Decision No. 2609 [¶1862] of returns for income and excess-profits tax purposes upon the basis of inventories taken "at cost or market value, whichever is lower," the matter was referred to the Attorney-General. (See T. D. 2649 [¶1867]). The Attorney-General has advised upon the basis of a recent decision of the Supreme Court (Doyle v. Mitchel Brothers, decided May 20th last [(247 U. S. 179) (Page 579, 1918 Income Tax Service)]) that the methods of taking inventories authorized by Treasury Decision No. 2609 are permissible. That decision supplemented by the last paragraph [¶1870] of Treasury Decision No. 2649 defining "a dealer in securities" therefore continues to stand as a regulation of the Department. (T. D. 2744, July 3, 1918.)

1872 **Sale of Property in General.**—Section 10 of this title provides that for the purpose of ascertaining the gain derived from the sale or other disposition of property, real, personal, or mixed, acquired prior to March 1, 1913, the fair market price or value of such property, as of that date, shall be the basis for determining the amount of such gain derived.

1873 This provision contemplates that all such gain realized and so ascertained, in cash or its equivalent, upon the sale or disposition of capital assets, shall be returned as gross income. In the case of property acquired subsequent to March 1, 1913, and later sold or disposed of the difference between the cost and the selling price will be returned as income for the year in which the sale is made. (Art. 116, ¶387–388, Reg. 33, Rev., Jan. 2, 1918.)

1874 In the case of the sale of assets—real, personal, or mixed—the loss will be the difference between the cost thereof, or the value as of March 1, 1913, if acquired before that date, and the price at which disposed of. When the loss is claimed through the destruction of property by fire, flood, or other casualty the amount deductible will be the difference between the value as of March 1, 1913, or the cost of the property and the salvage value thereof, including in the latter value the amount, if any, that has been or should have been set aside and deducted in the current or previous years from gross income on account of depreciation and which has not been paid out in making good the depreciation sustained. (Art. 147, ¶458, Reg. 33, Rev., Jan. 2, 1918.)

1875 **Sale of Stock.**—When stock is sold from lots purchased at different times and at different prices and the identity of the lots can not be determined as to the dates of purchase, the stock sold shall be charged against the earliest purchases of such stock. The excess of the amount realized on the sale over the cost of the stock, or its fair market price or value as of March 1, 1913, if purchased before that date, will be the profit to be accounted for as income. In the case of stock received as a stock dividend out of surplus other than earnings or profits accrued since March 1, 1913, or of stock in respect of which any such dividend was paid, the cost of each share of such stock shall be ascertained as specified in paragraph 28 [¶826] hereof. (¶60, of Art. 4, Reg. 33, Rev. Jan. 2, 1918, as amended by T. D. 2734, June 17, 1918.) [¶2846.]

1876 **Sale of Property Acquired for Stock of Excessive Aggregate Par Value.**—In cases wherein property was taken over in exchange for the capital stock of a corporation at a par value in excess of the fair market value of the property, and such property should be later sold, it will be necessary to ascertain as nearly as possible the fair market value of the property at the time it was taken over or as of March 1, 1913, if acquired before that date, and any excess over this ascertained fair market value at which the property is sold will be held to be profit or income to the corporation for the year in which the sale was made. (Art. 111, ¶381, Reg. 33, Rev., Jan. 2, 1918.)

1877 **Sale of Property Acquired for Nominal Sum Merely.**—Similar action may be taken in cases wherein corporations acquire property prior to March 1, 1913, for a mere nominal sum and which had, as of March 1, 1913, a value greatly in excess of such nominal sum. A careful estimate of the fair market value of such property as of March 1, 1913, may be made and set up as the capital invested in the property, and if such property is thereafter disposed of at a price in excess of such fair market value, the amount so in excess will be treated as income to be accounted for in preparing the return of annual net

income of the year in which the property is sold. The value of the property fixed in the manner and for the purpose hereinbefore indicated will be subject to the approval of the Commissioner of Internal Revenue.

1878 If the property was acquired subsequent to March 1, 1913, the amount for which it is later sold or disposed of in excess of the cost price, regardless of the fact that it may have been acquired for a mere nominal price, will constitute income for the year in which the property was disposed of and must be so returned. (Art. 112, ¶382–383, Reg. 33, Rev., Jan. 2, 1918.)

1879 **Sale of Real Estate.**—The entire profits realized by individuals or corporations from the sale of real estate will be taxable except where the property in connection with which the profit is obtained was acquired prior to March 1, 1913, * * * (T. D. 2090, Dec. 14, 1914.)

1880 The cost of property acquired subsequent to the incidence of the tax will be the actual price paid for it, together with the expense incident to the procurement of the property in the first instance, and its sale thereafter, and the cost of improvement or betterment, if any. (T. D. 2005, July 8, 1914.)

1881 In determining the cost of the property for the purpose of arriving at the profit realized upon the sale it will be permissible for the corporation to add to the initial cost such carrying charges as interest, taxes, insurance, etc., provided such carrying charges have not been deducted from net income which the corporation may have had and returned for years subsequent to January 1, 1909, and prior to the date of the sale to the property.

1882 T. D. 2005 is not intended to be so construed that carrying charges, if they consist of such expenditures as constitute allowable deductions from gross incomes, are to be added to the cost of the property if there is a gross income from which such charges as constitute allowable deductions may be deducted. It is intended, however, that in the case of a holding or developing company which has not yet reached the stage of having any income of consequence resulting from its corporate operations, the carrying charges or other excess over the incidental income received may be added to and made a part of the cost of the property. (T. D. 2137, Jan. 30, 1915.)

1883 In reply, you are informed that special assessments, if any, actually paid as local benefits in connection with real estate are held to be expenditures which add to the value of the property and should be capitalized, whether such expenditures were made prior to, or subsequent to, the incidence of the tax; that is to say, such expenditures, no matter when paid, became, in effect, a part of the cost of the property.

1884 All carrying charges in excess of the income which may have been received prior to the sale of the property may be included as a part of the cost of such property, and the cost thus determined will be excluded from the gross proceeds of the sale when the property is sold, and the excess of such cost will be returned as income.

1885 This ruling is based upon the presumption that the corporation is doing business, and, having income as a result of the business done, must use such income to offset in as far as it will do so, the expense necessary to the operation and maintenance of the business.

1886 If the carrying charges are less than the income, such carrying charges, unless they be for improvements and betterments, will not be added to and made a part of the cost of the property, but will be deducted from the gross income received, in which case it would appear that the return of the corporation would show a net income subject to tax.

1887 The Treasury Decision (T. D. 2005) referred to is not intended to be so construed that the carrying charges, if they consist of such expenditures as constitute allowable deductions from gross income, are to be added to the cost of the property, if there is a gross income from which such charges as constitute allowable deductions may be deducted. It is intended, however, that in the case of a holding or developing company which has not yet reached the stage of having any income of consequence resulting from its corporate operations, the excess of the carrying charges over the incidental income received may be added to and made a part of the cost of the property. (Letter to The Corporation Trust Company, signed by Commissioner W. H. Osborn, and dated December 22, 1914.)

1888 **Real Estate Subdivisions.**—In the case of real estate corporations, which purchase, or shall have purchased, a tract of land with a view to dividing it into lots or parcels of ground to be sold as such, the entire value, as of March 1, 1913, or cost, if acquired subsequent to that date, shall be equitably apportioned to the several lots or parcels, to the end that any gain, derived from the sale of any such lots or parcels may be returned as income for the year in which the sale was made.

This rule contemplates that there will be a measure of gain or loss in every lot of
1889 parcel sold, and does not contemplate that the capital invested in the entire tract shall be extinguished before any taxable income shall be returned. The sale of each lot or parcel will be treated as a separate transaction and the gain will be accounted for accordingly. If a loss results from the sale of capital assets, the amount of the loss to be deducted will be ascertained in a like manner as if a gain had been realized, and will be the amount by which the selling price is less than the value, as of March 1, 1913, or less than the cost, if acquired subsequent to that date, as the case may be. (Art. 117, ¶391–392, Reg. 33, Rev., Jan. 2, 1918.) [¶2850.]

1890 **Sale of Real Estate or other Property on the Installment Plan.**—[Amended by T. D. 2707, which see at ¶1894.] In the case of a contract to sell real estate or other property on the installment plan, title remaining in the vendor until the property is fully paid for, the income to be returned by the vendor will be that proportion of each installment payment which the gross profit to be realized when the property is paid for bears to the gross contract price. If, for any reason, the vendee defaults in his installment payments and the vendor repossesses the property, the entire amount received on installment payments, less the proportion of profit previously returned, will be income to the vendor, and will be so returned for the year in which the property was repossessed. (Art. 117, ¶390, Reg. 33, Rev., Jan. 2, 1918.) [¶2851–6.]

1891 **Sale of Merchandise on Installments.**—[Amended by T. D. 2707, which see at ¶1894.] Corporation selling furniture, musical instruments, clothing, furnishings, etc., on the installment basis, title passing to the vendee at the time of sale, will treat such contracts as accounts receivable and as "sales during the year" at their face value, thus accounting for as income the difference between the cost and the sales price. If the purchaser defaults in payment and the account becomes uncollectible and the uncollected balance is charged off, the amount so charged off may be deducted as a loss.

In all cases where inventories are taken (and they must be taken where the business
1892 consists of buying and selling commercial commodities) for the purpose of ascertaining the gain or loss resulting from the business of the year, the inventories must be taken in accordance with instructions to be included in special regulations [¶1862] which will be furnished upon application to the collector of internal revenue. (Art. 120, ¶395–396 Reg. 33, Rev., Jan. 2, 1918.) [¶2849.]

1893 **Income From Contract Sales.**—[Amended by T. D. 2707, which see at ¶1894.] When property or merchandise is disposed of under a contract of sale, payments to be made in installments, title remaining in the vendor until the contract price is fully paid, the vendor will return as income that proportion of each installment payment, which the gross profit to be realized when the contract is fully performed, bears to the gross contract price. If by reason of the default in payment or for any other reason the vendor repossesses the property he will return as income the entire amount of the installments up to that time received, less the proportion of profits previously returned, and the repossessed property will be taken into stock at its then value, that is, at cost less a reasonable allowance for depreciation. (Art. 120, ¶397, Reg. 33, Rev., Jan. 2, 1918.)

1894 **Amending Instructions Relative to Reporting Income Derived From the Sale of Personal Property on the Installment Plan.**—It has been ascertained that dealers in personal property who sell on the installment plan adopt one of four ways of protecting themselves in case of default, namely:

1. A provision that title is to remain in the seller until the buyer has performed his part of the agreement.
2. A conveyance of title to the purchaser subject to a lien for the unpaid portion of the purchase price.
3. The conveyance to the purchaser and an immediate reconveyance by way of chattel mortgage to the seller.
4. Conveyance to a trustee in trust to hold the title pending performance of the contract and subject to its provisions.

1895 The purpose is the same in all of these transactions.

In view of the fact that in a number of States it is held that the form first mentioned
1896 shall not be enforced according to its terms but will be regarded as a sale with a chattel mortgage back to secure the unpaid purchase price, it is desirable that a uniform rule be established which will be equitable and applicable to all.

The rule prescribed is that in the sale or contract for sale of personal property
1897 on the installment plan, whether or not title remains in the vendor until the property is fully paid for, the income to be returned by the vendor will be that proportion of each installment payment which the gross profit to be realized when the property is paid for bears to the gross contract price. If, for any reason, the vendee defaults in his

installment payments and the vendor repossesses the property, the entire amount received on installment payments less the profit originally returned will be income to the vendor to be so returned for the year in which the property was repossessed.

This ruling amends Articles 117 [¶1890] and 120 [¶1891-1893] of Regulations 33,
1898 revised and revokes all previous decisions and rulings which are in conflict herewith. (T. D. 2707, April 25, 1918.)]¶2849.]

1899 Method of Computing Profit or Loss from Sale of Standing Timber or of Lumber Manufactured Therefrom.—In compliance with your request of the 1st instant, you are advised that the following information is furnished you in regard to the preparation of your returns of annual net income under the provisions of the Act of September 8, 1916, as far as the calculation of the value of standing timber as of March 1, 1913, is concerned, and it also represents the regulations of this office in regard to allowances to be deducted from gross income for the value of stumpage: ¶Corporations owning timber land and logging off the timber and manufacturing it into lumber, will, if the timber was acquired prior to March 1, 1913, be permitted to exclude from gross income either through a deduction from gross receipts or through a charge into the cost of manufacturing the timber into lumber, an amount equivalent to the fair market price or value of the standing timber as of March 1, 1913. ¶In order to secure the benefit of this deduction such corporations must set up on their books as of March 1, 1913, the fair market price *en bloc*, of all the timber then owned by them, and then, by dividing this *en bloc* value by the estimated number of feet (board measure) in the entire timber holdings, the per unit value or price as of March 1, 1913, will be ascertained, which per unit price or value will be the basis for measuring the amount which may be added to the cost of manufacture, or deducted from gross income, until the *en bloc* value of the entire holdings as of March 1, 1913, shall have been extinguished, after which no further deduction on this account shall be allowed. ¶The same rule will apply in the case of timber or timber lands purchased subsequent to March 1, 1913, the only difference being that actual cost, that is the gross purchase price, shall, in making the computations, be substituted for *en bloc* price or value as of that date. If the entire market price or value of both timber and lands, as of March 1, 1913, or the entire cost, if acquired subsequent to that date, is extinguished through a deduction from gross income for timber used, or through a per unit charge to cost of manufacturing lumber, then the entire amount realized from the logged-off lands or for other salvage, will be returned as income of the year in which such lands are sold or disposed of. ¶If the timber or timber lands are sold *en bloc*, the gain or loss will be ascertained on the basis of the difference between the fair market price or cost and the selling price, accordingly as the property was acquired prior or subsequent to March 1, 1913. ¶The fair market price or value of timber or timber lands, as of March 1, 1913, is the price at which the property in its then condition and with the circumstances then surrounding it, could have been sold, for cash or its equivalent. This value must not be speculative, but must be determined without taking into account any prospective profits that may result from the manufacture of the timber into lumber. It must be, as the law contemplates, a fair market value, and, once determined, must be set up on the books, and, as the measure of a stumpage deduction for income tax purposes must remain constant and cannot be increased. The value so set up as of March 1, 1913, will be subject to the approval of the Commissioner of Internal Revenue. ¶You are also informed that this office is not prepared to express an opinion at the present time as to what stumpage value would constitute a fair value of short leaf North Carolina pine as of March 1, 1913, and in regard to your further request you are informed that the ruling contained in the above regulation will refer equally as well to the years 1913, 1914 and 1915, with the exception that the cost of the timber shall be the governing basis instead of its value as of March 1, 1913. (Letter to a subscriber, signed by Deputy Commissioner L. F. Speer, and dated March 3, 1917.)

In reply [to your further inquiry] you are informed that in preparing returns of annual
1900 net income of your corporation you should state therein your opinion of the fair market price or value of your timber as of March 1, 1913, and calculate your income based on that estimate. When an examination of your return is made, the figure given therein which represents the fair market price or value of your timber as of March 1, 1913, will be given due consideration, and in the event that it appears to this office that it does not represent a fair market price or value of your timber as of March 1, 1913, you will be so advised and be given an opportunity to present reasons and facts as to why the figures given in your returns should be accepted. (Letter to a subscriber—same as in ¶1899—, signed by Deputy Commissioner L. F. Speer, and dated March 10, 1917.)

1901 Sale of Property for Stock or Bonds of the Purchasing Corporation.—If corporation sells its capital assets in whole or in part, it will include in its gross income for the year in which the sale was made an amount equivalent to the excess of the sales price over the fair market price or value of such assets, as of March 1, 1913, if acquired prior to that date, or over cost if acquired subsequent to that date.

If the purchase price is paid with stock issued by a purchasing company, the pur-
1902 chase price will be the actual value at the time of the stock issued in payment for such assets. (Art. 101, ¶366–367, Reg. 33, Rev., Jan. 2, 1918.)

1903 In determining the profits realized or the loss sustained upon the sale of capital assets by one corporation to another, payment therefor being made in the stocks or bonds of the purchasing corporation, the profit or loss, as the case may be, from such sale will be ascertained upon the basis of the difference between the cost of such assets to the seller, in case they were acquired subsequent to March 1, 1913, or the fair market value as of March 1, 1913, if acquired prior to that date, and the fair cash value of the stock or bonds at the time the sale was made. (Art. 118, ¶393, Reg. 33, Rev., Jan. 2, 1918.)

1904 Where a subsidiary or other corporation sells or transfers its assets to a parent or other corporation accepting in exchange therefor the stock or bonds of the purchasing corporation, the question of gain or loss resulting from this transaction will be determined upon the basis of the difference between the cost or market value as above indicated of the assets sold and the actual value of the stock or bonds given in exchange therefor. Any gain or loss thus ascertained as resulting from such a transaction will be added to or deducted from the entire gross income, as the case may be, of the selling corporation in the year in which the capital assets were sold. (Art. 119, ¶394, Reg. 33, Rev., Jan. 2, 1918.)

1905 In a case wherein a corporation acquires from stockholders the stock of another corporation, giving in exchange therefor its own stock, it is held the transaction is one by which the corporation acquiring the stock becomes the sole stockholder of the other corporation. As a result of this transaction no income accrues to the corporation whose stock is thus acquired. Neither will any income accrue to this corporation if later the holding corporation should cause the assets of the underlying company to be transferred to it for mere nominal consideration.

If, however, one corporation buys the assets of another and issues direct to the
1906 selling company its own capital stock in payment for the assets acquired, the transaction will be treated by the selling company as a sale of its assets, and the question as to whether profit or loss results from the sale will depend upon whether or not the value of the stock taken in payment for the assets is in excess of the fair market price or value as of March 1, 1913, of the assets sold or of their cost accordingly as they were acquired by the selling company prior or subsequent to that date. ¶If the value of the stock is so in excess, the amount of such excess will be taxable income for the year in which the assets were sold and must be so returned.

If the excess over value as of March 1, 1913, or over cost, as the case may be includes
1907 any surplus earned since March 1, 1913, upon which the income tax has been paid, the excess or profits resulting from the sale may be reduced by the amount of such tax-paid surplus.

If the purchasing corporation takes over all the assets including accounts receivable,
1908 bills receivable, surplus, etc., of the selling corporation and assumes its liabilities, the amount so assumed will be considered a part of the purchase price, and to the extent that the entire purchase price exceeds the cost or value, as of March 1, 1913, as the case may be of the assets disposed, income will accrue to the selling company. (Art. 124, ¶410-414, Reg. 33, Rev., Jan. 2, 1918.)

1909 Law ¶46. **Property Exchanged for Other Property.**—"(b) When property is exchanged for other property, the property received in exchange shall for the purpose of determining gain or loss be treated as the equivalent of cash to the amount of its fair market value, if any;" [Read at ¶3104–6.]

1910 Law ¶47. **Stocks or Bonds Exchanged for Stocks or Bonds of Equal Aggregate Face Value in Connection with Reorganizations, Mergers, or Consolidations.**—"but when in connection with the reorganization, merger, or consolidation of a corporation a person receives in place of stock or securities owned by him new stock or securities of no greater aggregate par or face value,"

1911 Law ¶48. "no gain or loss shall be deemed to occur from the exchange, and the new stock or securities received shall be treated as taking the place of the stock, securities, or property exchanged." [Read at ¶3107.]

1912 Law ¶49. **Securities exchanged for securities of greater par or face value.**—"When in the case of any such reorganization, merger or consolidation the aggregate par or face value of the new stock or securities received is in excess of the aggregate par or face value of the stock or securities exchanged, a like amount in par or face value of the new stock or securities received shall be treated as taking the place of

the stock or securities exchanged, and the amount of the excess in par or face value shall be treated as a gain to the extent that the fair market value of the new stock or securities is greater than the cost (or if acquired prior to March 1, 1913, the fair market value as of that date) of the stock or securities exchanged." [Read at ¶3108.]

1913 Law ¶51. **A Net Loss Suffered in One Year to be Allowed as a Deduction in Computing Net Income of the Previous or Succeeding Year. "Net loss" Defined.**—"Sec. 204 (a). That as used in this section the term "net loss" refers only to net losses resulting from either"]In connection with "net loss" read at ¶3114.]

1914 Law ¶52. "(1) the operation of any business regularly carried on by the taxpayer, or"

1915 Law ¶53. "(2) the bona fide sale by the taxpayer of plant, buildings, machinery, equipment or other facilities, constructed, installed or acquired by the taxpayer on or after April 6, 1917, for the production of articles contributing to the prosecution of the present war;"

1916 Law ¶54. "and when so resulting means the excess of the deductions allowed by law (excluding in the case of corporations amounts allowed as a deduction under paragraph (6) [dividends, ¶2102] of subdivision (a) of section 234) over the sum of the gross income plus any interest received free from taxation both under this title and under Title III."

1917 Law ¶55. **Net Loss as a Deduction for the Preceding Taxable Year.**—"(b) If for any taxable year beginning after October 31, 1918, and ending prior to January 1, 1920, it appears upon the production of evidence satisfactory to the Commissioner that any taxpayer has sustained a net loss, the amount of such net loss shall under regulations prescribed by the Commissioner with the approval of the Secretary be deducted from the net income of the taxpayer for the preceding taxable year;"

1918 Law ¶56. **Redetermination of Income Tax and War Excess-Profits Tax for the Preceding Year.**—"and the taxes imposed by this title and by Title III [war excess-profits tax] for such preceding taxable year shall be redetermined accordingly."

1919 Law ¶57. **Credit for or Refund of Amount Found to be Due the Taxpayer by Redetermination of Taxes for Prior Year.**—"Any amount found to be due to the taxpayer upon the basis of such redetermination shall be credited or refunded to the taxpayer in accordance with the provisions of section 252 [¶2488]."

1920 Law ¶58. **If the Net Loss to be Deducted be Greater than the Net Income of the Preceding Year, the Excess May be Deducted from the Net Income of the Succeeding Year.**—"If such net loss is in excess of the net income for such preceding taxable year, the amount of such excess shall under regulations prescribed by the Commissioner with the approval of the Secretary be allowed as a deduction in computing the net income for the succeeding taxable year."

1921 Law ¶59. **Benefit of the Net Loss Provision Accrues to Members of a Partnership and to Beneficiaries of an Estate or Trust.**—"(c) The benefit of this section shall be allowed to the members of a partnership and the beneficiaries of an estate or trust under regulations prescribed by the Commissioner with the approval of the Secretary."

In connection with the above read at ¶3114.[

1922 Law ¶287. **Items Deducted in Computing Net Income of a Corporation.**—"Sec. 234. (a) That in computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:"

1923 Law ¶28. **"Paid or Incurred" and "Paid or Accrued" Construed.**—"The term "paid," for the purposes of the deductions and credits under this title, means "paid or accrued" or "paid or incurred," and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212 [¶754]." [¶2834.]

1924 "Paid" or "actually paid," within the meaning of this title, does not necessarily contemplate that there shall be an actual disbursement in cash or its equivalent. If the amount involved represents an actual expense or element of cost in the production of the income of the year, it will be properly deductible even though not actually disbursed in cash, provided it is so entered upon the books of the company as to constitute a liability against its assets, and provided further that the income is also returned upon an accrued basis.

If in the course of its business, a corporation credits the accounts of individuals,
1925 firms, or corporations with the amount of any expenses, interest, rentals, wages, etc., due them, thereby making them subject to the personal drawings of such creditors, or if expenses actually incurred are vouchered in definite amounts, the amounts so credited or vouchered may be treated as paid, and if the amounts so credited or vouchered are expenses incurred concurrently with and in the production of the income of the year, they may be allowably deducted therefrom.

This ruling must not be construed to allow as a deduction any accrued charges
1926 which if paid in cash or otherwise would not be deductible. (Art. 126, ¶418-420. Reg. 33, Rev., Jan. 2, 1918.)

1927 Pursuant to the foregoing provision, corporations keeping their accounts in strict accord with the methods prescribed by municipal, State, or Federal authorities, or in accord with approved standard accounting practices consistently followed from year to year, will be permitted to make their returns of annual net income on the basis of the accounts so kept, provided such systems of accounting clearly and correctly reflect the net income of each year. (Art. 127, ¶421, Reg. 33, Rev., Jan. 2, 1918.)

1928 Under this provision it will be permissible for corporations which accrue on their books monthly or at other stated periods, amounts sufficient to meet fixed annual or other charges, to deduct from their gross income the amounts so accrued, provided such accruals approximate as nearly as possible the actual liabilities for which the accruals are made, and provided that in cases wherein deductions are made on the accrual basis as hereinbefore indicated, income from fixed and determinable sources accruing to the corporations must be returned, for the purpose of the tax, on the same basis.

In cases wherein, pursuant to the consistent practice of accounting of the corpora-
1929 tion, or pursuant to the requirements of some Federal, state, or municipal supervising authority, corporations set up and maintain reserves to meet liabilities, the amount of which and the date of payment or maturity of which, is not definitely determined or determinable at the time the liability is incurred, it will be permissible for the corporations to deduct from their gross income the amounts credited to such reserves each year, provided that the amounts deductible on account of the reserves shall approximate as nearly as can be determined, the actual amounts which experience has demonstrated would be necessary to discharge the liabilities incurred during the year and for the payment of which additions to the reserves were made; and provided if it shall be found that the amount credited to any such reserve is in excess of the reasonable or probable needs of the corporation to meet and discharge the liabilities for which the reserve is credited, the excess of such reserves over and above the reasonable or probable needs for the purpose indicated, shall be at once disallowed as a deduction and restored to income for the purpose of the tax; and provided further, that in no event will sinking funds or other reserves set up to meet additions, betterments or other capital obligations, constitute allowable deductions from gross income.

This ruling contemplates that the income and authorized deductions shall be com-
1930 puted and accounted for on the same basis, and that the same practice shall be consistently followed year after year. Amounts paid in discharge of any liability or obligation for which a reserve has been set up, as hereinbefore outlined, will, when paid be changed to the reserve created to meet it, in so far as such reserve is sufficient to meet the liability, provided always that the liability is of a character, which constitutes an allowable deduction within the meaning of the law.

If upon investigation, it shall be found that returns made upon the basis of accruals
1931 and reserves, do not reflect the true net income, the corporation so failing in this way to return the true net income, will not thereafter be permitted to make its returns upon any basis other than that of actual receipts and disbursements.

The reserves contemplated by the foregoing rulings, are those reserves only, which
1932 are set up to meet some actual liability incurred, the amount necessary to discharge which can not at the time be definitely determined, and do not contemplate reserves to meet losses contingent upon shrinkage in values, losses from bad debts, capital investments, etc., which losses are deductible only when definitely determined as the result of a closed or completed transaction, and are charged off. (T. D. 2433, Jan. 8, 1917.)

1933 Changing from a Cash to an Accrual Basis, and Vice Versa.—May an investment corporation change from a cash to an accrual basis, and vice versa, whenever it wishes to and, if not, under what conditions may it change? (Answer.) In reply you are advised that the change from a cash to an accrual basis and vice versa may be effected at any time, provided, however, that the method adopted is consistently followed from year to year. If it be assumed that the change to a different basis is made during 1918, an amended return for 1917 will not be required; but, as the year 1918 will be the year of transition from one basis to another, the return for 1918 should show actual receipts and

disbursements for that year, and all accruals, either receivable or payable, for this or any prior year. (Letter of inquiry from Geo. E. Holmes, New York, N. Y., and the reply thereto signed by Acting Commissioner Homer S. Pace, and dated December 17, 1918.)

1934 **Each Year's Return Must be Complete Within Itself.**—All expenses, including interest, taxes, and other necessary charges, incidental and necessary to the creation or production of the gross income or properly chargeable against the same, being deductible from the gross income, whether paid in cash or entered on the books as a liability, can not, if unpaid, be carried forward to be deducted from the gross income of a subsequent year. (Art. 127, ¶422, Reg. 33, Rev., Jan. 2, 1918.)

1935 Each year's return, both as to income and deductions therefrom, must be complete within itself. Charges, of whatever character, against income can not be cumulative. They must be deducted from the income of the year in which incurred or not at all. The expenses, liabilities, or deficit [read at ¶1913] of one year can not be used to reduce the income of a subsequent year.

The deductions must in all cases be such as are authorized and within the limits
1936 fixed by law. (Art. 127, ¶423-424, Reg. 33, Rev., Jan. 2, 1918.)

1937 **Adjustment on Account of Amounts Properly Deductible but not Deducted.**—A corporation having the right under this rule to deduct all authorized allowances, whether paid in cash or set up as a liability, it follows that if it does not within any year pay or accrue certain of its expenses, interest, taxes, or other charges, and makes no deduction therefor, it cannot deduct from the income of the next or any subsequent year any amounts then paid in liquidation of the previous year's liabilities. (Art. 128, ¶425, Reg. 33, Rev., Jan. 2, 1918.)

1938 If, however, a corporation discovers or detects expenses or liabilities which were due and payable during a preceding year, it will be permissible for it to make an amended return for the year to which such expense or liability applies, include such expense in the deductions of that year, and file a claim for refund for any taxes overpaid by reason of the failure to deduct such expense or liability in the original return of that year. (Art. 128, ¶426, Reg. 33, Rev., Jan. 2, 1918.)

1939 **No Particular Bookkeeping or Accounting System Required.**—Any system of accounting which is not consistent with the purpose and intent of the rules set out in this title, and with the general rules set out in these regulations for the ascertainment of net income, will not be accepted as a correct basis for making returns. (Art. 128, ¶427, Reg. 33, Rev., Jan. 2, 1918.)

1940 No particular system of bookkeeping or accounting will be required by the department. However, the business transacted by corporations must be so recorded that each and every item set forth in the return of annual net income may be readily verified by an examination of the books of account. (Art. 182, Reg. 33, Jan. 5, 1914.)

1941 **Corporation Books Must Confirm Figures Given in Annual Return.**—As this office requires no special system of bookkeeping, neither does it require any specific method by which the net income to be returned by corporations shall be determined. (T. D. 2161, Feb. 19, 1915.)

1942 The books of a corporation are assumed to reflect the facts as to its earnings income, etc. Hence they will be taken as the best guide in determining the net income upon which the tax imposed by this act is calculated. Except as the same may be modified by the provisions of the law, wherein certain deductions are limited, the net income disclosed by the books and verified by the annual balance sheet, or the annual report to stockholders, should be the same as that returned for taxation. (Art. 183, Reg. 33, Jan. 5, 1914.)

1943 Law ¶288. **All ordinary and Necessary Business Expenses are Deductible.**—"(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business," [For construction of "paid or incurred" read at ¶1923.] [Read at ¶2878.]

1944 Law ¶326. **Items of Expense Not Deductible in Computing Net Income.**—"Sec. 235. That in computing net income no deduction shall in any case be allowed in respect of any of the items specified in section 215."* [¶2967.]

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*Sec. 215. That in computing net income no deduction shall in any case be allowed in respect of [¶1023.]

(a) Personal, living, or family expenses [¶1024];

(b) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate [¶1025]; [¶2967.]

(c) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made (¶1027]; [¶2967.] or

(d) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy [¶1028].

1945 **Organization Expenses do not Constitute an Allowable Deduction from Gross Income.**—Numerous inquiries have been made of this office with respect to the treatment by corporations in their returns of annual net income of what are known and commonly designated as "organization expenses"—that is, attorney's and accountants' fees, together with fees paid to the State authorities prior to, or coincident with, the securing of a charter and the incorporation of the company.

1946 In the absence of a formal and definite ruling on this question, there appears to have been some conflict in the holdings and instructions issued by this office in regard to this matter. Therefore, in order to make definite the position of the bureau and to promote consistency, it is held that "organization expenses" constitute a capital investment, such expenses being offset by the asset value of the corporate franchise, an intangible asset of a somewhat permanent character and in many instances of substantial value. Such expenses are very similar in character to the discount at which the stock issued by the company is being sold, the only effect of such expenses and discounts being to reduce the amount of capital available for use and employment in the business of the corporation. The discount at which the stock is sold is not a loss sustained within the meaning of the law, and therefore not deductible [¶1949]. Likewise "organization expenses"—that is to say, expenses incident to and connected with the incorporation and organization of the company—are not "ordinary and necessary expenses of maintenance and operation," which are the only "expenses" authorized by the income-tax law to be deducted from gross income.

1947 Hence it is held that "organization expenses" do not constitute an allowable deduction from gross income of any taxable year, nor do such expenses constitute a proper item to be added to the cost of any physical property to be provided for through the authorized annual allowance for depreciation. (T. D. 2499, June 11; 1917.)

1948 **Expenses Incurred in Sale of Capital Stock.**—Any and all expenses incidental to or connected with the selling of the capital stock (common or preferred) of a corporation for the purpose of raising capital to be by it invested in property or employed in the business for which the corporation is organized are not an "expense of operation and maintenance" within the meaning of this title, and such expense is not an allowable deduction from the gross income, for the reason that such an expense is incurred in a capital transaction; that is, the raising of capital to be invested or employed in the business.

1949 Such expense, like the discount at which the shares of stock may be sold, has the effect only to reduce the available capital of the corporation and can not be used to reduce the income from operations; that is to say, any expense incident to the bringing of capital into the company, whether it be a new or a going concern, can not be recouped out of or charged against the operating income. It is a capital loss or expense properly chargeable against the proceeds of the sale of the stock and reduces the capital rather than the earnings of the company. (Art. 145, ¶453-454, Reg. 33, Rev., Jan. 2, 1918.)

1950 **Commissions Paid in Connection with Sale of Securities.**—Commissions paid in purchasing and selling securities are a part of the cost or selling price of the securities and not otherwise deductible. They do not constitute expense deductions in a return of income. (Art. 8, ¶108, Reg. 33, Rev., Jan. 2, 1918.)

1951 **Assessments on Stock Paid by Stockholders.**—Amounts to be assessed and paid under a mutual agreement between bondholders or stockholders of a corporation, to be used in reorganization of a corporation are held to be investments of capital and not deductible for any purpose in a return of income. (Art. 8, ¶100, Reg. 33, Rev. Jan. 2, 1918.)

1952 Assessments made by a corporation on its capital stock are regarded as an investment of capital and do not constitute an allowable deduction in the return of the individual. (T. D. 2090, Dec. 14, 1914.)

Charges to capital account generally, ¶2894.

1953 **Procurement of Copyright and Plates.**—Amounts expended for securing copyright and plates which remain in possession of and as property of the person making the payments are investments of capital and can not be allowed as deductions in returns of income. (Art. 8, ¶105, Reg. 33, Rev., Jan. 2, 1918.)

1954 **Defending or Perfecting Title.**—Cost of defending title or perfecting title to property constitutes a part of the cost of the property and is not a business expense. (Art. 8, ¶106, Reg. 33, Rev., Jan. 2, 1918.)

1955 **Architect's Services in Connection with Erection of Building.**—The amount expended for architect's services is part of the cost of the building and not a deductible business expense. (Art. 8, ¶107, Reg. 33, Rev., Jan. 2, 1918.)

1956 **Expenses of Operation and Maintenance.**—Expenses of operation and maintenance shall include all expenditures for material, labor, fuel, and other items entering into the cost of the goods sold or inventoried at the end of the year, provided such expenditures have not been considered in determining the cost of goods or materials or purchases thereof during the year, when the income derived from operations is ascertained through inventory, and all other disbursements necessary to the operation of the business, except such as are required by the act to be segregated and stated separately in the return.

1957 Expenditures which are taken into account in determining the cost of products finished or unfinished, are not to be again deducted as expenses of operation and maintenance. (Art. 129, ¶428-429, Reg. 33, Rev., Jan. 2, 1918.)

1958 **Cost of Material.**—In ascertaining expenses proper to be included in the deductions to be made under the item of "Expenses," corporations carrying materials and supplies on hand should include in such expense the charges for materials and supplies only to the amount that the same are actually consumed and used in operation and maintenance during the year for which the return is made, Provided that the cost of such material and supplies has not been taken into account in determining the net income for any previous year.

1959 If a corporation carries materials or supplies on hand for which no record of consumption is kept or of which physical inventories at the beginning and end of the year are not taken, it will be permissible for the corporation to include in its expenses and deduct from gross income the total cost of such supplies and materials as were purchased during the year for which the return is made. (Art. 130, ¶430-431 Reg. 33, Rev., Jan. 2, 1918.)

1960 **Cost of Manufactured Products.**—A manufacturing corporation may include as an element of the cost of manufactured products, the cost of the raw material, the cost of labor of the men who actually work on such products, as well as the cost of supervisory, or what may be denominated as "unproductive" labor, such as that of the foremen, inspectors, overseers, etc., provided such expenditures are not separately deducted from the gross income and the return of annual net income.

1961 The overhead charges referred to in Form 1031 should include the salaries of officers, clerk hire, and such other office expenses as do not have to do directly with the manufacture of the product. (T. D. 2152, Feb. 12, 1915.)

1962 The only interest which constitutes an allowable deduction from gross income under the Federal income tax law is the amount actually paid within the year

* * * *

1963 Interest payments of this character, being allowable deductions from gross income, will not be taken into account as a part of the cost of manufacture for the reason that to consider them an element of the cost of manufacture and to deduct them from gross income as specific items would in effect result in a double deduction of the amounts involved.

1864 A corporation would not be permitted to include in its deductions the rental value of the property which it owns and occupies nor would it be permitted to deduct from gross income the interest which the capital invested or employed would earn were it otherwise invested.

1965 It therefore follows that a corporation can not take into account as a part of the cost of manufacture any possible earnings; that is, earnings which might accrue on its capitalized investment had such capital been so placed as to earn a given rate of interest. [Read at ¶2029.] (T. D. 2137, Jan. 30, 1915.)

1966 Incidental Repairs.—The cost of incidental repairs which neither add to the value of the property nor appreciably prolong its life, but keep it in an ordinarily efficient operating condition, may be deducted as expense, provided that the plant or property account is not increased by the amount of such expenditures. Such repairs, to the extent that they arrest deterioration, should have the effect to reduce the depreciation charge otherwise deductible. (Art. 131, ¶432, Reg. 33, Rev., Jan. 2, 1918.)

1967 Additions and Betterments Made by Tenant Corporations.—In the case of corporations which occupy leased premises under a lease contract which requires such corporations to make all necessary repairs or improvements, which repairs or improvements revert to the owner of the fee at the expiration of the lease, the tenant corporation is entitled to charge the cost of all such repairs and improvements to the expense of doing business. This expense of improvements, somewhat permanent in character, should, however, be prorated over the number of years constituting the term of the lease, and the amount deductible from gross income of each year would be the aliquot part of the cost of such repairs and improvements. (T. D. 2137, Jan. 30, 1915.)

1968 Where, under the terms of a rental or lease contract, a tenant agrees to erect a building or to expend during the rental period a certain fixed sum in making improvements upon the freehold of another, it is held for income tax purposes that the building or permanent improvement becomes a part of the realty unless otherwise agreed between the contracting parties; and, as such, shall be accounted for, * * * as gain or profit to the lessor in the value of his realty at the termination of the contract, whether terminated by expiration of the lease or otherwise.

1969 The gain or profit to the lessor at the termination of the lease, by expiration or otherwise, is held to be the difference between the cost of the building or improvement and a reasonable allowance for the exhaustion, wear and tear of the property arising out of its use or employment in the business or trade during the period of its life under the lease; and no annual deduction for depreciation shall be allowed during the lease term.

1970 As the use of the building or permanent improvement by the tenant during the term of the lease is a part of the consideration of the contract, the cost may be prorated by the tenant over the lease term and deducted at an annual rate as a part of the "necessary expenses actually paid in carrying on any business or trade," together with the cost of incidental repairs and maintenance.

1971 The paragraph of Treasury Decision 2135 entitled "Rental: Permanent improvements made under contract in addition to yearly," is hereby repealed. (T. D. 2442, Feb. 6, 1917.)

1972 The cost of erecting permanent buildings, or of making permanent improvements on ground leased by a company, is held to be an additional rental and is therefore a proper deduction from gross income, provided such buildings and improvements, under the terms of the lease, revert to the owner of the ground at the expiration of the lease. In such case, however, the cost will be prorated according to the number of years constituting the term of the lease and the annual deduction will be an aliquot part of such cost. As to income to lessor see paragraph 50, Page 11, these regulations [¶1973 herein]. (Art. 140, ¶445, Reg. 33, Rev., Jan. 2, 1918.)

1973 Permanent Improvements under Lease or Rental Contracts.—When improvements become a part of real estate, the difference between cost of the improvements and allowable depreciation during the lease term is gain or profit to the lessor at the end of the lease term and is to be accounted for as income at that time. (Art. 4, ¶50, Reg. 33, Rev., Jan. 2, 1918.)

1974 The cost of the buildings being a rental charge and deductible on the prorated basis, the lessee corporation will not be permitted to deduct from gross income any depreciation with respect to such buildings, but the cost of incidental repairs necessary to keep them in an efficient condition for the purposes of their use, may be deducted as an expense of operation and maintenance.

1975 If, however, the life of the improvement is less than the life of the lease, the depreciation may be taken by the lessee, based upon the cost and life of the improvement. (Art. 140, ¶446-447, Reg. 33, Rev., Jan. 2, 1918.)

1976 Taxes Paid by a Tenant.—Taxes paid by a tenant to or for a landlord for business property are additional rent and constitute a deductible item to the tenant and taxable income to the landlord. The amount of the tax will be deductible by the landlord. (Art. 8, ¶115, Reg. 33, Rev., Jan. 2, 1918.)

1977 **Purchase of a Leasehold.**—Where a leasehold is sold for a specified sum, the purchaser may take as a deduction in his return an aliquot part of such sum, each year, based on the number of years the lease has to run. (Art. 8, ¶113, Reg. 33, Rev., Jan. 2, 1918.)

1978 Law ¶289. **A Reasonable Amount For Salaries or Other Compensation For Personal Services Actually Rendered May Be Deducted as a Necessary Business Expense.**—"including a reasonable allowance for salaries or other compensation for personal services actually rendered," [Read at ¶2882.]

["A reasonable allowance for salaries, etc." is now for the first time provided for, specifically as such, in terms.]

1979 Sections 5 (a) of the Income Tax Act of September 8, 1916, as amended, provides, as to the income of individuals and partnerships, that for the purpose of the tax there shall be allowed as deductions, among others, "the necessary expenses actually paid in carrying on any business or trade," and Section 12 (a) provides that the net income of a corporation shall be ascertained by deducting from the gross amount of its income received within the year, among other things, "all the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties."

Payments for services by business enterprises (including individuals in business,
1980 partnerships and corporations) may, of course, be deducted under this general language. The Government, entitled to taxes based on the net income of each enterprise, is interested and authorized, however, to see that each specific expenditure sought to be deducted is in itself "necessary." The question is by what examination and what test this shall be determined. The subject is not dealt with in any general way in the Income Tax Regulations, although Article 138 [¶1999] bears on special payments to employees of corporation.

The test of deductibility in the case of compensation payments is whether they are
1981 in fact payments purely for services or include some other element. But in the case of any compensation, however determined, which exceeds amounts ordinarily paid for like services in like enterprises under like circumstances, the burden is upon the enterprise to show that the amount paid was solely the purchase price of services. This test and its practical application may be further stated and illustrated as follows:

1982 1. Any amount paid in the form of compensation, but not in fact as the purchase price of services, is not deductible.

1983 (a) An ostensible salary may be a distribution of a dividend on stock. This is likely to occur in the case of a corporation having few stockholders, practically all of whom draw salaries. If in such a case the salaries are based upon or bear a close relationship to the stockholdings of the officers or employees, it would seem likely that the salaries, if in excess of those ordinarily paid for similar services, are not paid wholly for services rendered, but in part as a distribution of earnings upon the stock. [Read at ¶1999.]

(b) An ostensible salary paid by a corporation may be in part a waste or appro-
1984 priation of assets of the corporation. This may occur where salaried employees are in control of the corporation through holding directly or indirectly a majority of its stock or, in the case of a large corporation with many stockholders, owning a substantial minority of its stock, and the tendency of the officers unduly to inflate their salaries must be taken into account. If a compensation contract with the majority stockholder or stockholders is approved by all the stockholders, as well as by the directors, it might, however, be dealt with like any other contract.

(c) An ostensible salary may be in part payment for property. This may occur,
1985 for example, where a partnership sells out to a corporation, the former partners agreeing to continue in the service of the corporation. In such a case it may be found that the salaries of the former partners are not merely for services, but in part constitute payment for the transfer of their business.

1986 2. The form or method of fixing compensation is not decisive as to deductibility.

While any form of contingent compensation invites scrutiny as possible distribution
1987 of earnings of the enterprise, it does not follow that payments on a contingent basis are to be treated fundamentally on any basis different from that applying to compensation at a flat rate. Generally speaking, if contingent compensation is paid pursuant to a free bargain between the enterprise and the individual made before the services are rendered, not influenced by any consideration on the part of the employer other than that of securing on fair and advantageous terms the services of the individual, it should be allowed as a deduction even though in the actual working out of the contract it may prove to be greater than the amount which would ordinarily be paid.

3. As to compensation determined after services have been rendered, reasonable-
1988 ness is ordinarily the controlling test of deductibility.

In certain instances apparently of this sort it may be shown that the compensation
1989 is fixed according to a custom or practice having virtually the force of a contract.

Where, however, such is not the case and it is for the management to fix compensation such as is deemed fair, it is just to assume that true compensation is only such amount as would ordinarily be paid in like circumstances by other similar enterprises.

4. In connection with the questions discussed above, the following rulings as to
1990 treatment of amounts ostensibly paid as compensation, but not allowed to be deducted as such, appear to be warranted:

(a) In the case of excessive payments by corporations, if such payments correspond
1991 to or bear a close relationship to stockholdings, the amount of the excess should be treated as dividends and would thus be exempt from the normal tax and from the excess-profits tax in the hands of the recipients [Read at ¶1999]; or if such payments represent an appropriation of assets of the corporation by officers who control it and fix their compensation in violation of the rights of the corporation, the amount of the excess, while disallowed as a deduction by the corporation, should be treated as compensation of the individuals subject to the normal and the excess-profits taxes, compensation illegally secured being none the less subject to tax in all respects; or if such payments constitute in part payment for property, the amount of the excess should be treated by the corperation as capital expenditure and by the recipient as part of the purchase price.

(b) In the case of excessive payments by individuals or partnerships, the amounts
1992 disallowed should ordinarily be treated as partnership shares and would thus be free from the excess-profits tax to the recipient, but, of course, still subject to the income tax, except that payments for property should be treated by the individual or partnership as a capital expenditure and by the recipient as part of the purchase price.

The foregoing rules naturally do not permit a ready determination of every question
1993 arising as to compensation payments, but applied in the light of full knowledge of the facts in the particular case they do, however, indicate a basis of solution. They may be summed up as follows:

Compensation on whatever basis fixed, representing only the price paid for services
1994 pursuant to a fair bargain made in advance between the individual and the business enterprise, is deductible in determining the taxable net income of the enterprise. Payments nominally as compensation for services, which in fact include amounts paid as dividends, waste of corporate assets, payments for property or for anything other than services, are deductible only to an amount not in excess of compensation for like services in similar enterprises.

Compensation greater than that ordinarily paid for like services in similar enter-
1995 prises must be shown to represent payment for services only. In the case of compensation fixed after services are rendered and not in accordance with any contract or any custom or practice amounting virtually to a contract, reasonableness is ordinarily the controlling test of deductibility. (T. D. 2696, April 10, 1918.)

1996 Special payments, sometimes denominated gifts or bonuses, made by corporations, partnerships, or individuals to employees, will constitute allowable deductions from gross income in ascertaining net income for the purpose of the income tax, when such payments are made in good faith and an additional compensation for the services actually rendered by the employees. If such payments, when added to the stipulated salaries do not exceed a reasonable compensation for the services rendered they will be regarded as a part of the wage or hire of the employee, and therefore an ordinary and necessary expense of operation and maintenance, and as such will be deductible from gross income. (Art. 8, ¶111, Reg. 33, Rev., Jan. 2, 1918.)

1997 Special payments, sometimes denominated as gifts or bonuses to employees of corporations, will constitute allowable deductions from gross income in ascertaining net income for the purpose of the income tax, when such payments are made in good faith and as additional compensation for the services actually rendered by the employees. If such payments, when added to the stipulated salaries, do not exceed a reasonable compensation for the services rendered, they will be regarded as a part of the wage or hire of the employee, and therefore an ordinary and necessary expense of operation and maintenance, and as such deductible from gross income. (Art. 138, ¶441, Reg. 33, Rev., Jan. 2, 1918.)

1998 Payments, Other than Dividends, Paid by a Corporation to Officers or Employees Who are Stockholders.—Special payments made to officers or employees who are stockholders, in the guise of additional salaries or compensation, the amount of which is based upon or bears a close relationship to the stockholdings of such officers or employees

or the capital invested by them in the business of the company, will be regarded as a special distribution of profits, or compensation for the capital invested, and not payment for services rendered. Payments under such latter conditions being in the nature of dividends, will not be deductible from gross income. (Art. 138, ¶442, Reg. 33, Rev., Jan. 2, 1918.)

1999 Salaries of officers or employees who are stockholders will be subject to careful analysis, and if they are found to be out of proportion to the volume of business transacted, or excessive when compared with the salaries of like officers or employees of other corporations doing a similar kind of volume or business, the amount so paid in excess of reasonable compensation for the services will not be deductible from gross income, but will be treated as a distribution of profits. (Read at ¶1991 and ¶1983.] (Art. 138, ¶443, Reg. 33, Rev., Jan. 2, 1918.)

2000 The appended decision of the United States Circuit Court of Appeals for the Second Circuit in the case of Jacobs & Davies (Inc.) v. Anderson, collector, for internal revenue, is published for the information of internal-revenue officers and others concerned.

Jacobs and Davies (Inc.) v. Anderson.

(228 Fed. 505.)

Summary.

1. Deductions from Gross Income.

When a company composed of two stockholders divided the profits between them, calling it compensation, the same can not be deducted as an expense of business.

2. Income.

Money paid out under these circumstances is equivalent to dividend and must be treated as income of the corporation.

3. Judgment of the United States District Court Affirmed.

The decision of the lower court is affirmed by the Circuit Court of Appeals.

(T. D. 2262, Nov. 15, 1915.)

2001 **Bonuses Which May be Otherwise Deductible are Not So when Left with the Company to Secure it Against Loss.**—This office is in receipt of your letter of the 19th instant, in reply to office letter dated July 11, 1917, in which you make a further inquiry which is substantially as follows:

If a corporation pays its employees a salary in the form of weekly stated amounts, together with a certain percentage of the profits, and if such percentage of the profits is in no way based upon interest in the business and makes a total which is no more than a fair compensation, is such payment or percentage of the profits allowably deducted from gross income of the corporation in the event that there is an agreement to the effect that the so-called bonuses are to be left on deposit with the company to secure the company against such losses as may be by contract charged to the employees at a percentage of the profits received under the contract.

2002 In reply, you are informed that under the conditions set out in the foregoing paragraph, the bonuses or percentages of profits "left on deposit with the company to secure it against loss," are not deductible. (Letter to Greenbaum, Wolff & Ernst, New York, N. Y., signed by Acting Deputy Commissioner S. H. Boyd, and dated November 30, 1917.)

2003 **Compensation Paid in Stock.**—Compensation paid an employee in capital stock of the corporation may be deducted as an expense if so charged on books at the actual value of such stock, and the recipient of such stock, if he be a taxable person, will return such stock at the same value as income. (Art. 139, ¶444, Reg. 33, Rev., Jan. 2, 1918.)

2004 **Commissions Paid to Salesmen.**—Commissions paid to salesmen as a part of the expense of conducting business are allowable deductions to the payer of the commission. (T. D. 2090, Dec. 14, 1914.)

2005 **Commissions Paid Real Estate Agents.**—A commission paid to a real estate agent for collecting rents and management of property is a legitimate business expense and constitutes an allowable deduction in computing net income. (T. D. 2090, Dec. 14, 1914.)

2006 **Commissions to Salesmen Paid in Stock.**—Commissions allowed salesmen, paid in stock, may be deducted as expense if so charged on books at the actual value of such stock. (Art. 117, Reg. 33, Jan. 5, 1914.)

2007 **Salaries and Wages Paid to Employees while in the Military or Naval Forces During the Present War.**—Many corporations, partnerships and also individuals who are engaged in business continue to pay all or portions of the regular compensation of officers or employees who have for all or part of the period of the war joined the naval

or military forces of the United States or have undertaken services for the Government at Washington or elsewhere at reduced or nominal compensation. The business purpose of the continuance of such compensation, under such circumstances, is to preserve the organization and secure the return after the war of such officers or employees. You are advised that amounts so expended by corporations, partnerships or individuals engaged in business constitute during the continuance of the war, ordinary and necessary expenses of doing business and are allowable as deductions in computing net income for purposes of the income, war income and excess profits taxes. (T. D. 2660, March 1, 1918.)

2008 **Pensions.**—Amounts paid for pensions to retired employees, or to their families or others dependent upon them, or on account of injuries received by employees, or lump-sum amounts paid as compensation for injuries, are proper deductions as "ordinary and necessary expenses." Such deduction shall be limited to the amount not compensated for by insurance or otherwise.

2009 No deduction shall be made for contributions to a pension fund the resources of which are held by the corporation, the amount deductible in such case being the amount actually paid to the employee. (Art. 136, ¶438–439, Reg. 33, Rev., Jan. 2, 1918.)

2010 **Salary Paid After Death of Employee.**—When the amount of the salary of an officer or employee is paid for a limited period after his death to his widow or heirs, in recognition of the services rendered by the individual, no services being rendered by the widow or heirs, such payment is not "ordinary and necessary" expense of transacting business and does not constitute an allowable deduction. (Art. 137, ¶440, Reg. 33, Rev., Jan. 2, 1918.)

2011 **Spending Money.**—So-called "spending or treating money" actually advanced by corporations to their traveling salesmen to be used by them as a part of the expense incident to selling the product of such corporations, is an allowable deduction in a return of income by such corporation. The deduction of such expenditures is conditioned upon a satisfactory showing that all the allowance claimed as a deduction was actually expended for and was an ordinary and usual expense incurred in selling the product or merchandise of the corporation. (Art. 133, ¶434, Reg. 33, Rev., Jan. 2, 1918.)

2012 **Donations not Deductible.**—Donations made to employees and others, and which do not have in them the element of compensation, are considered gratuities and are not allowable deductions from gross income as expenses of operation or maintenance or under any other item. (Art. 135, ¶437, Reg. 33, Rev., Jan. 2, 1918.)

2013 **Donations by Agricultural Corporations to Fairs.**—A corporation engaged in agricultural business cannot be allowed to make a deduction from gross income on account of donations to fairs, churches, and associations, such donations being made for the purpose of obtaining and preserving the good will of the farmers who raise crops for it, since the amounts so expended are clearly in the nature of gratuities and are not necessary expenses of operation and maintenance as there is no such consideration in this case as is contemplated in [¶2012]. (Extract from letter to Carey, Piper and Hall, Attorneys at Law, Baltimore, Maryland, signed by Acting Commissioner G. E. Fletcher, and dated March 25, 1915.)

2014 **Donations Deductible.**—Donations made by a corporation for purposes connected with the operation of the property, when limited to charitable institutions, hospitals, or educational institutions, conducted for the benefit of its employees or their dependents, shall be a proper deduction as ordinary and necessary expenses. Such deduction should, however, be reduced by any amount repaid to the corporation by the employees.

2015 Donations which legitimately represent a consideration for a benefit flowing directly to the corporation as an incident of its business are allowable deductions from gross income in ascertaining net income subject to the income tax; for example, a street railway corporation donates a sum of money to an organization intending to hold a convention in the city in which it operates, with the expectation that the holding of such convention will augment its income through a greater number of people using the cars. In such case the donations would be an allowable deduction, the reduction to be reduced by any portion of the donation which may be returned to the corporation. (Art. 134, ¶435–436, Reg. 33, Rev., Jan. 2, 1918.)

2016 Law ¶290. **Rentals or other Payments Required to be Made as a Condition to the Continued Use of Possession of Certain Property is Deductible.**—"and including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity;" [Read at ¶2891.]

2017 Business Insurance.—Premiums paid in advance, covering a period of several years, are to be taken as a deduction on the basis of one of two methods: When the books are kept on a cash basis, the entire amount is deductible in the year in which the premium is paid. Where the books are kept on an accrual basis the premium is to be prorated over the period covered by the insurance. (Art. 8, ¶110, Reg. 33, Rev., Jan. 2, 1918.)

2018 Reserves for Insurance.—Funds set aside by a corporation for insuring its own property are not a proper deduction, but if such funds are set aside, or a reserve therefor is set up, any loss actually sustained and charged to such funds or reserves may be deducted. (Art. 144, ¶452, Reg. 33, Rev., Jan. 2, 1918.)

2019 Depositors' Guaranty Fund.—Banking corporations which, pursuant to the laws of the States in which they are doing business, are required to set apart, keep, and maintain in their banks the amount levied and assessed against them by the State authorities as a "Depositors' guaranty fund," may deduct from their gross income in their returns of annual net income the amount so set apart each year to this fund, provided that such fund, when set aside and carried to the credit of the State banking board or other duly authorized State officer, ceases to be an asset of the bank, but may be withdrawn in whole or in part, upon demand by such board or State officer to meet the needs of these officers, as required by State laws, in reimbursing depositors in insolvent banks, and provided further that no portion of the amount thus set aside and credited is returnable, under the existing laws of the State, to the assets of the banking corporation.

If, however, such amount is simply set up on the books of the bank as a reserve
2020 to meet a contingent liability, and remains an asset of the bank, it will not be deductible except as it is actually paid out as required by law and upon demand of the proper State officers. (Art. 146, ¶455–456, Reg. 33, Rev., Jan. 2, 1918.)

2021 Redemption of Trading Stamps.—Corporations, mercantile or otherwise, which issue trading stamps, coupons, etc., for the purpose of increasing their business, which stamps or coupons are redeemable in merchandise, may allowably deduct from gross income as a business expense the amount which such corporations actually expend for such stamps or coupons, and also the actual cost to the corporations of the merchandise given in redeeming the same. [¶2881.]

This rule contemplates that a reserve set up as a liability equal to the redemption
2022 value of the stamps or coupons issued is not, as such, an allowable deduction, the deduction being limited to the cost of the stamps or coupons and the merchandise with which they are redeemed. (Art. 141, ¶448–449, Reg. 33, Rev., Jan. 2, 1918.)

2023 Earnings of Public Utility Paid to City, etc.—In case of a public utility constructed, operated, or maintained by a corporation under contract with any city, State, Territory, or the District of Columbia, with an agreement that a portion of the net earnings of such public utility corporation shall be paid to the city, State, Territory, or the District of Columbia, the amount so paid may be deducted by the public utility company as a necessary expense of transacting business. (Art. 142, ¶450, Reg. 33, Rev., Jan. 2, 1918.)

2024 Service Connections and Pipe Extensions by Public Utility.—Moneys so received for service connections and pipe extensions are not permitted to be deducted from the gross amount of the income, for they do not come within any of the permitted classes of deductions mentioned in the statute. Moneys so expended are invested in permanent improvements, which tend to enhance the rental and the market value of the water system. (Caption: Union Hollywood Water Co. vs. John P. Carter, collector case, Act of Aug. 5, 1909 (238 Fed. 329). (T. D. 2475, April 4, 1917.)

2025 Certain Deductible and Non-Deductible Expenses of Railroads.—The appended decision [summary] of the United States District Court for the Western District of Michigan, Southern Division, in the case of the Grand Rapids & Indiana Railway Company v. Doyle, Collector. (245 Fed. 792.)

1. Deductions from Gross Income.

Deductions for expenditures for addition and betterments to the property, such as expenditures for sidings or spur tracks, are not authorized.

2. Operating Expenses Deductible.

The payment for labor and materials which go into the actual operating of the road and the property are deductible.

3. Expenses of Maintenance Deductible.

Maintenance means the upkeep or preser g of the condition of the property to be operated and does not mean additions to the uipment, additions to the property, or improvements of former condition of the road.

4. Cost of Improvements.

Where old rails are replaced with new and heavier rails, wooden bridges and culverts with concrete and steel bridges and culverts, the rule is that the cost of renewals with like kind and quality is allowable, but excess cost is not allowable as deduction.

5. Expenditures Included in Income.

Amounts expended for improving and adding to the property, such as building new stations and new shops, installing new machinery, and making additions to equipment, are included in income.

is published for the information of internal revenue officers and others concerned. (T. D. 2210, June 1, 1915.) (245 Fed. 792.)

2026 Lobbying Expenses and Campaign Contributions.—Sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda, and contributions for campaign expenses are held not to be an ordinary and necessary expense in the operation and maintenance of the business of a corporation, and are therefore not deductible from gross income in arriving at the net income upon which the income tax is computed. (Art. 143, ¶451, Reg. 33, Rev., Jan. 2, 1918.)

2027 Law ¶291. **All Interest Paid or Accrued on Indebtedness, With One Exception, Is Deductible.**—"(2) All interest paid or accrued within the taxable year on its indebtedness," [For definition of "paid or accrued" read at ¶1923.] [Read at ¶2895.]

2028 Law ¶292. **Interest Paid in Connection With Holdings in Certain Tax-Free Obligations and Securities Is Not Deductible.**—"except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917) the interest upon which is wholly exempt from taxation under this title as income to the taxpayer,"

2029 Interest on Capital or Surplus.—Interest calculated as being a charge against income on account of capital or surplus invested in the business but which does not represent a payment on an interest-bearing obligation, is not an allowable deduction from gross income—that is to say, the interest which the money would earn if otherwise invested is not a deductible charge against income. [Read at ¶1965] (Art. 187, ¶572, Reg. 33, Rev., Jan. 2, 1918.) [¶2896.]

2030 Car-Trust Certificates.—Equipment or car-trust certificates issued by or for railroad companies are a means by which such companies secure cars or other equipment, or the money with which such equipment is purchased.

The equipment becomes at once an asset of the company and the trust certificates
2031 secured by such assets are obligations of the railroad companies, similar to corporate bonds, mortgages, and like obligations. The trustees in whose names legal title to the equipment stands, are not an association within the meaning of this title, and are therefore not a taxable entity, but they are, for the purpose of this title, a fiscal agent, paying off the obligations, both principal and interest, of the railroad companies with funds appropriated by such companies.

The railroad companies may include these trust certificates in the amount of their
2032 bonded or other indebtedness reported under item 2 of the return Form 1031, and the interest paid thereon, * * * , will be deductible, * * * .

If the certificates contain a contract or provision by which the obligor agrees to
2033 pay any portion of the tax imposed by this title upon the obligee or reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required to pay, the trustees in such cases, in making interest payments on these certificates, will, in the absence of claims for exemption when interest payments are made to individuals, withhold the normal income tax on such payments regardless of the amount thereof. (Art. 188, ¶573–576, Reg. 33, Rev., Jan. 2, 1918.)

2034 Interest on Indebtedness as Rental.—Interest paid pursuant to contract on an indebtedness secured by mortgage on real estate occupied and used by a corporation, in which real estate the corporation has no equity or to which it is not taking title, is an allowable deduction from gross income as a rental charge, payment of which is required to be made as a condition to the continued use and possession of the property. If, however, the corporation has an equity in or is purchasing for its own use the real estate upon which such mortgage is a prior lien, the indebtedness will be held to be indebtedness of the corporation within the meaning of the law and the interest paid on such mortgage will be deductible [as interest] * * * . (Art. 186, ¶571, Reg. 33, Rev., Jan. 2, 1918.)

2035 **Interest on Deposits.**—In the case of banks and banking associations, loan or trust companies, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such banks, banking association, loan or trust company, may be allowably deducted from the gross income of such corporation. (Art. 190, ¶578, Reg. 33, Rev., Jan. 2, 1918.)

2036 Law ¶294. **Taxes Paid or Accrued Within the Year Are Deductible, with Certain Exceptions.**—"(3) Taxes paid or accrued within the taxable year imposed" [For construction of "paid or accrued" read at ¶1923.] [¶2897.]

2037 Law ¶295. **All Taxes Imposed by the Federal Government Except Income and Excess-Profits Taxes Are Deductible.**—"(a) by the authority of the United States, except income, war-profits and excess-profits taxes [¶2327]; or" [¶2898.]

2038 All taxes levied by the general taxing authority, levied and paid on all taxable subjects, including tax imposed and paid under the act of October 3, 1917, except war-excess profits, income taxes, and taxes assessed against local benefits, are allowable deductions to the party paying the same. Although excess-profits tax paid is not an allowable deduction in ascertaining the net income, the net income shown on any return will be credited with the amount of excess-profits tax for which the taxpayer will be liable for the same year, in order to determine the amount of income-tax liability. [See ¶2327] (Art. 8, ¶116, Reg. 33, Rev., Jan. 2, 1918.)

2039 Law ¶296. **All Taxes Imposed by the "Possessions" Are Deductible or Allowed as a Credit.**—"(b) by the authority of any of its possessions, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 238 [¶2332]; or"

2040 Law ¶297. **All State and Municipal Taxes, Except Certain Assessments Against Local Benefits, Are Deductible.**—"(c) by the authority of any State or Territory, or any county, school district, municipality, or other taxing subdivision of any State or Territory,"

2041 Law ¶298. **Certain Assessments Against Local Benefits are not Deductible.**—"not including those assessed against local benefits of a kind tending to increase the value of the property assessed; or" [¶2899.]

[The words "of a kind tending to increase the value of the property assessed" in the above are new.]

2042 So-called "taxes," more properly assessments, paid for local benefits, such as street, sidewalk, and other like assessments, imposed because of and measured by some benefit inuring directly to the property against which the assessment is levied, do not constitute an allowable deduction from gross income. Taxes deductible are those levied for the public welfare by the proper taxing authorities at a like rate against all property in the territory over which such authorities have jurisdiction.

2043 Special assessments, such as are hereinbefore contemplated and which are measured upon the basis of the benefit flowing directly to the property, are not deductible, even though an incidental benefit may inure to the public welfare. (Art. 194, ¶586-587, Reg. 33, Rev., Jan. 2, 1918.)

2044 Taxes paid pursuant to assessments levied by special districts, such as irrigation, reclamation, drainage districts, etc., for sidewalks in cities, street extension, grading, paving, etc., are held to be "taxes assessed against local benefits." Such taxes are not allowable deductions in a return of annual net income. (T. D. 2090, Dec. 14, 1914.)

2045 **Taxes for Local Benefits.**—What forms of taxes cannot be claimed as deductions? (Answer.) Taxes assessed against an individual on property owned by him to pay for the paving of a street, contiguous to his property, the construction of a sewer, sidewalk, etc., the sprinkling or oiling of a street in front of his home, the construction of levees to protect, or ditches to drain, property owned by him, cannot be claimed as deductions. In short, such taxes as are not general in nature and are levied on account of some work or privileges the benefit of which accrues to a limited number of property owners, of which the taxpayer is one, are not allowable deductions. (Question No. 62, 1918 Income Tax Primer.)

2046 **Excise, License, and Franchise Taxes are Deductible.**—The ruling of this office previously made to the effect that banking corporations are not permitted to deduct from gross income the amount of taxes paid for stockholders on the value of their capital stock outstanding, applies only to the taxes levied upon the value of the capital stock and is not intended to operate as so to prevent banking corporations from deducting from their gross income any State tax imposed against the corporation itself, as an excise or franchise tax; that is, a tax which the corporation is required to pay to the State in order that it may transact business within the State. (T. D. 2152, Feb. 12, 1915.)

2047 In the case of business, excise, license, or privilege taxes, they may be deducted either as taxes or items of expense, but not under both heads. (Art. 8, ¶117, Reg. 33, Rev., Jan. 2, 1918.)

2048 **Import, Tariff or Customs Duties.**—Import or tariff duties levied by act of Congress and paid to the proper customs officers, stamp taxes, and all other taxes (except income and excess profits taxes) imposed by internal-revenue laws and paid to collectors are deductible as taxes imposed under authority of the United States, provided they are not added to and made a part of the cost of articles of merchandise with respect to which they are paid, in which case they will be reflected in the cost of merchandise and can not be separately deducted. (Art. 195, ¶588, Reg. 33, Rev., Jan. 2, 1918.)

2049 You are advised that this office now holds that custom duties paid during the year by an individual are allowable deductions, as taxes or as part of the cost price if the individual is engaged in the importation of goods and merchandise. This ruling supersedes instructions contained in office letter to you referred to above, and you are requested to correct your report in accordance herewith. (Extract from a letter to a collector, signed by Deputy Commissioner L. F. Speer, and dated December 22, 1914.)

2050 **Taxes Paid for Shareholders.**—Banks paying taxes assessed against their stockholders on account of their ownership of the shares of stock issued by such banks cannot deduct the amount of taxes so paid in making their returns for the purpose of the income tax imposed by this title unless and to the extent that the laws of the State in which they do business by specific terms make the tax a direct liability of such banks, that is, a lien upon its property. The shares of stock are the property of the stockholders, and to the extent that the taxes assessed on the value of the shares of stock are property taxes the holders are primarily liable for their payment.

2051 The fact that State laws make it the duty of banks to pay the tax does not necessarily make the tax a liability of the banks. These provisions of State laws are intended only to provide a convenient means whereby the tax assessed against the stock on the basis of its value can be the more readily collected by the tax-collecting officers and do not attempt to assert liability against the bank, as is evidenced by the fact that in most, if not all, cases the tax is a lien upon the stock. For this purpose the liability of the bank is limited to the duty to collect or withhold from the stockholders the amount of taxes due and to pay the same over to the proper tax-collecting offices. Federal statutes prohibit States from imposing any tax upon national banks except upon the value of their real estate. In cases where States levy a tax on the stock of such banks and make it the duty of the banks to pay such tax for the stockholders such payments are not deductible from the gross income of such banks.

2052 This rule applies only to taxes levied upon the value of the capital stock, and it is not intended to so operate as to prevent banking corporations from deducting from their gross income any State tax imposed against the corporation itself on the value of its real estate, furniture and fixtures, or as an excise or a franchise tax; that is, a tax which the corporation is required to pay to the State on account of its own property or business in order that it may transact business within the State is deductible.

2053 The rule hereinbefore set out will apply in the case of corporations other than banks, upon the value of whose stock taxes are assessed to the stockholders. (Art. 192, ¶581-584, Reg. 33, Rev., Jan. 2, 1918.)

2054 **Tax on Bank Stock.**—Taxes on bank stock paid under legal requirement by the bank for its stockholders are deductible by the stockholders and not by the bank. Such payments are regarded as in the nature of additional dividends and should be included by the stockholder in his dividends received.

2055 Where bank stock is sold and transferred between date of assessment and payment of the tax, in the absence of statute governing, the stockholder liable for the tax (if the tax was actually paid) will have the benefit of the tax deduction in returns of income. This is a question of fact and to be determined as such. (Art. 8, ¶118-119, Reg. 33, Rev., Jan. 2, 1918.)

2056 A bank in Massachusetts *held* not authorized to deduct from is gross income taxes paid on its shares on behalf of its stockholders under Rev. Laws, Mass. c. 14, Secs. 9-18, in ascertaining its net income subject to special excise tax under Tariff Act Aug. 5, 1909, c. 6, Sec. 38, par. 2, 36 Stat. 112.—Eliot Nat. Bank v. Gill, 210 F. 833. (Affirmed by Circuit Court of Appeals, First Circuit, December 21, 1914 [218 Fed. 600].)

2057 The United States Circuit Court of Appeals, Eighth Circuit (No. 4260, December Term, 1914), in error to the District Court of the United States for the Eastern District of Missouri [March 25, 1915] in the case of the National Bank of Commerce in St. Louis, plaintiff in error, v. E. B. Allen, U. S. Collector of Internal Revenue for the First District of Missouri, defendant in error, affirms the decision of the court below (211 Fed. 743) in which judgment was rendered by the Court against the bank.

2058 The Court of Appeals held that (223 Fed. 472]: 1. Under the State law, where banks pay the State tax imposed on shareholders, but have a lien until reimbursed on the shares of stock and all dividends, the tax is not imposed on the banks; 2. State taxes so paid can not be legally deducted from gross income on returns made by banks under the corporation tax act; 3. The commissioner has power to make a new assessment within three years in case an incorrect return has been made; 4. There is no necessity of construing the word "false," where it is used with reference to the time in which the commissioner shall act, to mean fraudulently false. (T. D. 2198, May, 5, 1915.)

[Petition to the United States Supreme Court for a writ of certiorari to the Court of Appeals for the Eighth District *denied*. October 25, 1915.]

2059 **Taxable Status of Amount Refunded by Government in One Year, Representing Tax Paid for Which Credit has been Taken as a Deduction in a Previous Year.**—Receipt is acknowledged of your letter of December 16, 1918, in which you ask whether an individual who has claimed a deduction for taxes [such as Federal Excise Taxes] paid during the year in his income tax return for 1917 and in the following year it develops that these taxes were improperly assessed and collected, and a refund is made to the taxpayer in 1918, should consider "the amount of such refund gross income for the year 1918, or is it in the nature of additional income for 1917 and should the additional tax liability on the amount of the refund be taken care of as 1917 income by means of an amended return for 1917 and by an additional tax payment as of that year?" ¶In reply you are advised that this taxpayer will not be required to include in his return for 1918 the amount received as refund of taxes erroneously paid in the preceding year. He should, however, file an amended return for 1917 and claim a deduction therein for the correct amount of taxes due for that year. The further amount of income tax due for 1917 as a result of the reduction in the item of taxes paid during the year and a letter of explanation should accompany the amended return when it is forwarded the Collector of Internal Revenue. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated January 8, 1919.)

2060 Law ¶299. **All Foreign Taxes Are Deductible or Allowed as a Credit.**—"(d) in the case of a domestic corporation, by the authority of any foreign country, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 238 [¶2332]; or"

2061 Law ¶301. **Taxes Withheld at the Source on Account of Tax-Free-Covenant Obligations Are Not Deductible.**—"*Provided*, That in the case of obligors specified in subdivision (b) of section 221 [¶604] no deduction for the payment of the tax imposed by this title or any other tax paid pursuant to the contract or provision referred to in that subdivision, shall be allowed;"

2062 **Tax-Free Bonds.**—In the case of bonds or other forms of indebtedness issued with a guaranty that the interest thereon shall be free from taxation as against the holder, the corporation paying the tax pursuant to its guaranty, whether Federal, State, or municipal, will not be permitted to deduct the tax so paid. The tax assessable upon this income is a direct liability of the recipient, and the debtor corporation paying it does so voluntarily or at least in pursuance of a contract voluntarily entered into, which contract is in nowise binding upon or to be recognized by the Government in determining the tax liability of the corporation. Hence taxes so paid are not deductible from the gross income of the debtor. (Art. 193, ¶585, Reg. 33, Rev., Jan. 2, 1918.)

2063 Law ¶302. **Losses Sustained Are Deductible.**—"(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise;" [Heretofore the law read "losses sustained *and charged off*." However, Sec. 212 (b), ¶755, should be noted in this connection.] [¶2901.]

Basis of Determining Gain or Loss.—[Read at ¶1854.]

Net Losses.—[Read at ¶1913.]

2064 **Deductible Losses.**—The deduction for losses must represent losses not compensated for by insurance or otherwise and which were charged off and actually sustained within the year as evidenced by closed and completed transactions. [But read at "Inventories," ¶1861.] (Art. 147, ¶457, Reg. 33, Rev., Jan. 2, 1918.)

2065 The loss considered here has in it no element of "depreciation" or "allowance for wear and tear," or "compensation from insurance or otherwise." It is to be such loss as is absolute and complete and which has been actually sustained.

2066 Depreciation as an allowable deduction in ascertaining annual net income for the income tax is separately provided for, and is not to be confused with loss. The depreciation provided to be taken as a deduction in a return of income is the value assigned to the deterioration of physical improvements or assets, such as are susceptible of having their value lessened through wear and tear, use or obsolescence. (T. D. 2005, July 8, 1914.)

2067 **Shrinkage in Securities** [See "Inventories" at ¶1861.].—A corporation possessing securities, such as stocks and bonds, can not allowably deduct from gross income any amount claimed as a loss on account of the shrinkage in value of such securities through fluctuations of the market or otherwise; the only loss to be allowed in such cases is that actually suffered when the securities mature or are disposed of.

2068 In the case of banks or other corporations which are subject to supervision by State or Federal authorities, and which, in obedience to the orders of such supervisory officers, charge off as losses, amounts representing an alleged shrinkage in the value of property, real, personal, or mixed, the amounts so charged off do not constitute allowable deductions. Deductible losses are those only which are determined upon the basis of a closed or completed transaction. The foregoing applies only to owners and investors and not to dealers in securities, as to which see T. D. 2609 [¶1862]. (Art. 148, ¶459-460, Reg. 33, Rev., Jan. 2, 1918.) [¶2904.]

2069 Losses may be sustained by individuals or corporations on personal or real property * * * . Loss to be deductible must be an absolute loss, not a speculative or fluctuating valuation of continuing investment, but must be an actual loss, actually sustained and ascertained during the tax year for which the deduction is sought to be made; it must * * * be determined and ascertained upon an actual, a completed, a closed transaction.

2070 Losses sustained by * * * corporations from the sale of or dealings in personal or real property growing out of ownership or use of or interest in such property, will not be deductible at all unless they are * * * ascertained, determined and fixed as absolute in the above sense, within the taxable year in which the deduction is sought to be made. When loss under this heading is ascertained to be deductible, the entire amount of the loss will be deductible except where the property, in connection with which the loss occurred, was acquired prior to March 1, 1913 * * * . (T. D. 2005, July 8, 1914.)

2071 **Irrigation Bonds.**—District irrigation bonds generally are a lien upon the real estate affected by the irrigation project, and until a corporation holding such bonds has taken the necessary action to protect its interest and enforce the collection of the bonds the corporation will not be allowed to deduct from gross income, as a loss, the face value or any estimated amount supposed to represent a loss or shrinkage in the value of such bonds. Any estimated shrinkage in the value of bonds or other securities does not constitute a loss within the meaning of this title. So long as the value of a security is uncertain or unknown a loss can not be definitely ascertained and is therefore not deductible. (Art. 153, ¶471, Reg. 33, Rev., Jan. 2, 1918.)

2072 **Discount on Bonds Issued Prior to 1909.**—Discount on bonds issued and sold prior to the year 1909, if such discount was then charged against surplus or against the income of the year in which the bonds were sold, is held not to be deductible from the income of subsequent years, for the reason that the charging off prior to January 1, 1909, of the entire amount of the discount constitutes a closed transaction, and such transaction can not be reopened for the purpose of reducing the taxable income of a corporation for subsequent years by deducting therefrom an aliquot part of the discount. (Art. 149, ¶461, Reg. 33, Rev., Jan. 2, 1918.) (C. & A. R. R. *v.* U. S., Court of Claims [¶2073]).

2073 The appended opinion [caption only, ¶2074] of the Court of Claims of the United States in the case of Chicago & Alton Railroad Co. *v.* United States [decided Dec. 3, 1917] is published for the information of internal-revenue officers and other concerned.

2074 Caption referred to in ¶2073.—Where a railroad company sold bonds and equipment notes at a discount in 1906 and the books show that the loss was entirely charged off under the profit and loss account for 1906, and the company in making returns under the act of August 5, 1909, for purpose of assessment of excise tax for years 1911 and 1912, failed to deduct the proportionate amount of discount sustained, it has no right to claim refund of such amount. The petition of claimant for refund of tax dismissed. (T. D. 2631, Jan. 19, 1918.) (249 Fed. 280.)

2075 **Discount on Bonds Issued Subsequent to January 1, 1909.**—If, however, the bonds were sold subsequent to January 1, 1909, at a discount, and the amount of the discount was then charged off on the books, either against earnings or surplus, but not deducted in the corporation's return of net income, such discount as was not then deducted, may be spread over the life of the bonds, and an aliquot part of the discount may be deducted from the gross income of each year until the bonds mature or are redeemed.

2076 In cases wherein a corporation sells its bonds at a discount plus a commission for selling, the amount of such discount and commission, together with other expenses incidental to issuing the bonds, constitutes a loss, the aggregate amount of which loss will for the purpose of an income tax return, be prorated over the life of the bonds sold, and the amount thus apportioned to each year will be deductible from the gross income of each such year until the bonds shall have been redeemed.

2077 If a corporation having sold its bonds at a discount, the discount having been deducted from gross income later repurchases or redeems the bonds at a price less than par, the difference between the price at which they are redeemed and their par value will be returned as income. If bonds are sold at a premium the premium must be returned as income. (Art. 150, ¶462–464, Reg. 33, Rev., Jan. 2, 1918.)

2078 The appended decision of the United States Circuit Court of Appeals for the Third Circuit, is the case of the Baldwin Locomotive Works v. McCoach, collector, [221 Fed. 59, holding that if the loss sustained by selling its own bonds at a discount is an expense of the business of a corporation, the expense will not be paid until the maturity of the bonds, and should therefore be prorated over the life of the bonds] is published for the information of internal revenue officers and others concerned. (T. D. 2185, April 1, 1915.) [Decision reported at 221 Fed. 59.]

2079 **Loss Due to Retirement of Bonds.**—In a case wherein a corporation, under the terms of its indenture, securing an issue of bonds is required annually or at certain specified periods to purchase and retire a certain number of its bonds and in doing so pays more than par for the bonds, the loss sustained is an allowable deduction from gross income for the year in which such purchase is made, under the following conditions:

2080 First. If the bonds were sold at par, then the loss is the difference between par and the price at which they were repurchased for retirement.

2081 Second. If the bonds were sold at a premium and such premium was accounted for as income for the year in which issued, then the difference between par and the repurchase price may be deducted as loss, but if the premiums at which the bonds were issued had not been carried into the income account then the loss to be claimed should be the difference between the price at which the bonds were sold and the price at which they were repurchased.

2082 Third. If the bonds were sold at a discount and the discount was charged against the earnings of the year in which issued, the difference between par and the repurchase price may be deducted as a loss, but if the dicount on the bonds was prorated over the life of the bonds and the annual proportion charged against the yearly income, the amount to be charged off as a loss for the year in which the bonds are repurchased for retirement should be the difference between the price at which the bonds were sold and the repurchase price minus an allowance for the sum that had been charged off annually on account of the prorated discount on such bonds. (Art. 152, ¶467–470, Reg. 33, Rev., Jan. 2, 1918.)

2083 **Redemption of Stock on a Stipulated Premium Basis Considered a Capital Transaction.**—This office is in receipt of your letter of the 6th instant, in which you ask for information on the following question: "A corporation in 1912 issued preferred stock for par. It was provided on the certificates that said stock was redeemable at 110. The company exercised its option and redeemed the stock at 110 by calling it in. The difference appeared on the books as a reduction of undivided profits. Is this difference a lawful

deduction?" ¶In reply you are informed that this office will hold that the redeeming of the stock at a price in excess of par represents a capital transaction in which there can be no gain or loss to the corporation, and therefore the difference between the selling price of the stock and the price at which it was redeemed will not be deductible in a return of annual net income. (Letter to a subscriber, signed by Deputy Commissioner G. E. Fletcher and dated April 11, 1917.)

2084 **Voluntary Removal of Buildings.**—Loss due to the voluntary removal or demolition of old buildings, the scrapping of old machinery, equipment, etc., incident to renewals and replacements will be deductible from gross income, in an amount representing the difference between the cost of such property demolished or scrapped and an amount measuring a reasonable allowance for the depreciation which the property had undergone prior to its demolition or scrapping; that is to say, the deductible loss is only so much of the original cost, less salvage, as would have remained unextinguished had a reasonable allowance been charged off for depreciation during each year prior to its destruction. (Art. 155, ¶473, Reg. 33, Rev., Jan. 2, 1918.) [¶2902.]

2085 **Razing Old Buildings to Give Place to New Ones.**—When a corporation buys real estate, upon which is located a building or buildings, which it proceeds to raze, with a view to erecting thereon another building or buildings, it will be held that the corporation has sustained no deductible loss by reason of the demolition of the old building or buildings. In such case it will be considered that the value of the real estate, exclusive of old improvements, is equal to the purchase price of the land and buildings. (Art. 156, ¶474, Reg. 33, Rev., Jan. 2, 1918.)

2086 **Sale of Patents.**—A corporation disposing of patents by sale should determine the profit or loss arising therefrom by computing the difference between the selling price and the value as of March 1, 1913, if acquired prior to that date, or between the selling price and the cost, if acquired subsequent to that date. The profit or loss thus ascertained should be increased or decreased, as the case may be, by the amounts deducted on account of depreciation of such patents since March 1, 1913, or since the date of purchase if acquired subsequent to that date.(Art. 157, ¶475, Reg. 33, Rev., Jan. 2, 1918.)

2087 **Losses on Judgment.**—Any amount paid pursuant to judgment or otherwise on account of damages is deductible from gross income to the extent of, and when the amount is actually paid, less any amount of such damages as may have been compensated for by insurance. (Art. 158, ¶476, Reg. 33, Rev., Jan. 2, 1918.)

2088 **Cost of Successful Drawing, Models, etc., Capital.**—When a corporation has made expenditures for designs, drawings, patterns or models representing work of an experimental nature, and such designs, drawings, patterns, or models prove to be satisfactory and result in the production of salable goods, they will be treated as a capital asset, and the entire cost thereof, including experimental and development expenses, will be capitalized, in which case no part of such expenditures shall be included in expenses of running the business and shall not be treated as a deduction from gross income.—(Art. 175, ¶553, Reg. 33, Rev., Jan. 2, 1918.)

2089 **Cost of Unsatisfactory Models, Drawings, Etc., a Loss.**—If, however, the designs, drawings, patterns, or models prove by actual experience to be unsatisfactory and do not result in the production of salable goods and have no asset value, such expenditures charged off may be included as a loss incident to running the business and as such deducted from gross income, provided that the corporation in taking credit for such expenditures in its income tax return shall make a full and complete explanation with respect to the same and to the satisfaction of the Commissioner of Internal Revenue. (Art. 176, ¶554, Reg. 33, Rev., Jan. 2, 1918.)

2090 Law ¶303. **Worthless Debts are Deductible.**—"(5) Debts ascertained to be worthless and charged off within the taxable year;" [¶2906.]

2091 Where all of the surrounding and attendant circumstances indicate that a debt is worthless and uncollectible and that legal action to enforce payment would in all probability not result in the satisfaction of execution on a judgment, a showing of these facts will be sufficient showing of the worthlessness of the debt for purposes of deduction.

2092 A bad debt or worthless debt, as contemplated by the income-tax law and which may be deducted in a return of income, is a debt which has been actually ascertained to be worthless and charged off within the taxable year.

Debts arising from unpaid wages, salaries, rents, and items of similar taxable
2093 income will not be allowed as a deduction unless the income they represent has been included in the return of gross income for the year in which the deduction as a bad debt is sought to be made or in a previous year and the debts themselves have been actually ascertained to be worthless and charged off. (Art. 8, ¶94-96, Reg. 33, Rev., Jan. 2, 1918.)

2094 Losses which may be properly deducted from gross income on account of bad debts or doubtful accounts are those losses which have been definitely ascertained to have occurred and which were charged off during the year for which the return is made. It is not essential that the bad debt or account shall be proved worthless by legal proceedings before the deduction may be allowed but the corporation must not only be satisfied that the debt or account is worthless, but must be able to satisfy the Commissioner or Collector of Internal Revenue that the accounts charged off were definitely determined at the time to be worthless and that they had not been recognized as worthless or without value prior to the beginning of the year for which the return is made. (Art. 151, ¶465, Reg. 33, Rev., Jan. 2, 1918.)

2095 **Loss Must be Definite.**—In the absence of legal proceedings to determine the collectibility of a debt or account, the question of whether or not it is an asset without value will depend largely upon the judgment of the creditor. The mere writing down of the value of an account does not constitute such a loss as may be allowably deducted. The deduction will be permissible only when the debt or account is written out of the assets of the corporation. (Art. 151, ¶466, Reg. 33, Rev., Jan. 2, 1918.)

2096 **Bankruptcy.**—Bankruptcy may or may not be an indication of worthlessness of a debt. Actual determination of worthlessness in such cases is possible only when settlement in bankruptcy shall have been had. Only the difference between the amount received in distribution of assets of the bankrupt and the amount of proved claim may be considered for the purpose of deduction as a bad debt. (Art. 8, ¶97, Reg. 33, Rev., Jan. 2, 1918.)

2097 **Foreclosure Sale on a Mortgage.**—Where, under foreclosure, a mortgagee buys in the mortgaged property and credits the indebtedness with the purchase price the difference between purchase price and the indebtedness will not be allowable as a deduction for bad debt—the property which was security for the debt being in possession and ownership of the mortgagee is, for the purposes of income tax, held to be sufficient to justify a disallowance of a claim for bad debt.

Only where purchaser for less than debt is another than mortgagee may the dif-
2098 ference between debt and net from sale credited be deducted as bad debt. (Art. 8, ¶98-99, Reg. 33, Rev., Jan. 2, 1918.)

2099 **Compromise.**—Where an indebtedness is claimed and contested and a settlement is had by way of compromise whereby an amount, less than the debt claimed, is accepted in full payment and satisfaction of the debt, the difference between the amount paid and that claimed is not allowable as a deduction for bad debts. Where the settlement in compromise consists of a promise to pay an amount less than the debt claimed, the amount promised to be paid forms the basis of a new transaction, and upon failure to make good this promise the question will arise as to the deductibility of the new amount only. (Art. 8, ¶93, Reg. 33, Rev., Jan. 2, 1918.)

2100 **Debts Due and Payable Prior to March 1, 1913.**—All debts representing amounts that became due and payable prior to March 1, 1913, and not ascertained to be worthless prior to that date, whether representing income or a return of capital, are held to be allowable deductions, under paragraph B of the law, in a return of income for the year in which they are actually ascertained to be worthless and are charged off. (T. D. 2224, July 13, 1915.)

2101 **Reserves for Losses not Deductible.**—Reserves to take care of anticipated or probable losses are not a proper deduction from gross income. (Art. 126, Reg. 33, Jan. 5, 1914.)

2102 Law ¶304. **Amounts Received as Dividends are Deductible.**—"(6) Amounts received as dividends from a corporation which is taxable under this title upon its net income, and"

2103 Law ¶305. "amounts received as dividends from a personal service corporation out of earnings or profits upon which income tax has been imposed by Act of Congress [read at ¶772.];"

2104 **Earnings of Subsidiary Company.**—In a case wherein a holding company actually takes up each month on its books and credits surplus or profit and loss with its proportionate share of the earnings of the underlying companies, such holding company will be required to include in its gross income the amounts thus taken up, regardless of the fact that the same may not have been actually paid to or received by it in cash. The fact that the underlying companies credit the holding company with the amount of earnings to which it is entitled on the basis of the stock it holds, together with the fact that the holding company takes up on its books the amount thus credited, renders it incumbent upon the holding company to return these amounts as income. [But see "Consolidated returns," ¶1405.] (Art. 115, ¶386, Reg. 33, Rev., Jan. 2, 1918.)

2105 Law ¶306. **A Reasonable Allowance for Depreciation is Deductible.**—"(7) A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business including a reasonable allowance for obsolescence;" [Read at ¶2910.]

[Heretofore the law provided a reasonable allowance for the "exhaustion, wear and tear of property arising out of its use or employment in the business or trade," no mention of "obsolescence" being made in the law, specifically. Such "loss" had to be "charged off." As to "charged off" Sec. 212 (b), at ¶755 should be noted.]

2106 **Basis of Allowances for Depreciation.**—Section 12(a) of the act of September 8, 1916, as amended, to which section 5(a) is similar, provides that net income shall be ascertained by deducting from gross income, among other things:

Second. All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade.

2107 A reasonable allowance for the wear and tear of property arising out of its use or employment in the business or trade is to be based on the cost of such property or on its fair market price or value as of March 1, 1913, if acquired prior thereto. In the absence of proof to the contrary, it will be assumed that such value as of March 1, 1913, is the cost of the property, less depreciation up to that date.

2108 This decision is supplemental to articles 159 to 169, inclusive, of regulations No. 33 (revised), which to any necessary extent are modified accordingly. (T. D. 2754, Aug. 23, 1918.)

2109 The value to be cared for by depreciation is the actual amount invested in the property and not the value which may be arbitrarily or otherwise fixed. (Art. 8, ¶84, Reg. 33, Rev., Jan. 2, 1918.)

2110 Section 12, item "second," authorizes corporations to deduct from the gross amount of their income received within the year all losses actually sustained and charged off within the year, including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade.

2111 Depreciation as here used must be differentiated from depletion, obsolescence, and other losses elsewhere provided for in these regulations.

2112 The deduction for depreciation should be the amount of the loss occurring during the year to which the return relates, estimated on the cost of the physical property with respect to which such deduction is claimed, which loss results from wear and tear due to the use to which the property is put and which loss has not been made good through expenditures for renewals, replacements, and repairs, deducted under the heading of expenses for maintenance and operation. (Art. 159, ¶477-479, Reg. 33, Rev., Jan. 2, 1918.)

2113 Depreciation in an amount representing exhaustion from wear and tear of property arising out of its use or employment in business or trade, but no deduction shall be allowed for any amount paid out for new buildings, permanent improvements or betterments to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made. (Art. 8, ¶83, Reg. 33, Rev., Jan. 2, 1918.)

2114 **Must Be Charged Off.**—Within the purview of this item depreciation, to an amount measuring the decline in value due to exhaustion, wear and tear of property arising out of its use, is a loss. This loss, in order to constitute an allowable deduction from gross income, must be charged off. The particular manner in which the amount shall be charged off is not material, except that the amount measuring a reasonable allowance for depreciation must be either deducted directly from the book value of the assets or credited to a depreciation reserve account, and as such shall be reflected in the annual balance sheet. (Art. 159, ¶480, Reg. 33, Rev., Jan. 2, 1918.)

2115 Your attention is called to the "second" deduction under section 12 of the act of September 8, 1916, which provides:

2116 All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade; (a) in the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury. [Bear in mind that all of this paragraph is a quotation from the old law.]

2117 In view of the fact that it has been the practice of examining officers to disallow a deduction for depreciation or depletion if not charged off on the books of the corporation at the time of the investigation, it is deemed necessary to clarify the interpretation of this provision of the law.

2118 A corporation is not entitled to a deduction from the amount of its gross income of any amount for depreciation, depletion, or other loss sustained within the taxable year unless the amount of such depreciation, depletion, or other loss is charged off on the books of the corporation before such deduction is allowed. The purpose of this requirement that depreciation, depletion, and other losses be charged off on the books of the corporation before allowance is to insure that the returns of such corporation are in accord with its books of account, and that thereby error and fraud with respect to the facts are prevented. The statute is not, however, to be construed as requiring that depreciation, depletion, and other losses be charged off within the taxable year. It is sufficient that they are charged off before they are allowed as deductions. Consequently at the time of an examination of a corporation it should be given an opportunity to reopen its books and charge off depreciation, depletion and other losses which it actually sustained during the taxable year.

2119 The depreciation, depletion, and other losses must be charged off in the manner prescribed by the regulations. If the books of the corporation are reopened for the purpose of charging off depreciation, depletion, or other losses, corresponding corrections must be made in the other book entries; and if for any reason the facts do not warrant such other changes, depreciation, depletion, and other losses can not be charged off, and, therefore, can not be allowed as deductions. Thus, for example, if by reason of a distribution of earnings there is nothing from which to credit a reserve for depreciation no allowance for depreciation can be credited to a depreciation reserve account. [See ¶2159.]

2120 Whenever, therefore, a corporation has clearly suffered allowable depreciation, depletion, or other loss which has not been charged off on its books, and on reopening its books at the time of an examination charges off such depreciation, depletion, or other loss by proper entries, it is entitled to the benefit of the deduction of such depreciation, depletion or other loss subject to the general provisions of law.

2121 The instructions contained herein revoke the last paragraph of C. T. R. A. Mim. 48, dated March 27, 1917.

2122 You will please acknowledge the receipt of this letter. (Letter to Internal Revenue Agents, signed by Commissioner Daniel C. Roper, and dated June 25, 1918.)

In connection with the above read at ¶2919.]

2123 **Assets Not Subject to Wear and Tear, Such as Real Estate and Securities.**—Assets of any character whatever which are not affected by use, wear, and tear (except patents, copyrights, etc.) are not subject to the depreciation allowance authorized by this act. Real estate as such, and as distinct from the improvements thereon, is not reduced in value by reason of wear and tear, and it therefore follows that the "allowance" contemplated as an offset to depreciation in the case of real estate corporations does not apply to the ground, but is intended to measure the decline, by reason of wear and tear, in the value of the improvements. (Art. 162, ¶487, Reg. 33, Rev., Jan. 2, 1918.)

2124 **Value of Purchased Buildings May Have To Be Estimated.**—In determining the cost of the real estate upon which depreciable property is located it frequently occurs that no segregation is made of the cost of buildings as separate and distinct from the cost of the ground upon which such buildings stand. In such cases where the actual cost of the buildings or improvements at the time they were taken over by the corporation can not be definitely determined, it will be sufficient for the purpose of determining the rate of depreciation to be used in computing the amount which will be deductible from gross income to estimate the actual value at the time acquired, of buildings

or improvements if acquired after March 1, 1913, or the fair market price or value as of that date if the property was acquired prior to March 1, 1913, the value in either case to be reduced by the amount of depreciation previously sustained. (Art. 163, ¶488, Reg. 33, Rev., Jan. 2, 1918.)

2125 Depreciation in the Value of Stocks, Bonds, etc. [Read ¶2067-¶2068.]—The depreciation referred to in the income tax law does not relate to evidence of a right or interest in property and hence, any shrinkage in the value of bonds, stocks, and like securities, due to fluctuations in their market value, is not deductible in a return of income as depreciation or loss. (T. D. 2005, July 8, 1914.)

2126 * * * depreciation, applies only to such tangible property as is subject to wear and tear, exhaustion and obsolescence, and is not to be construed as recognizing any gain or loss due to fluctuations in the market value or arbitrary changes in the book value of securities and like assets, the gain or loss with respect to which will be determined only when such assets mature, or are sold or disposed of—that is, when there is a completed, a closed transaction. (T. D. 2077, Nov. 21, 1914.)

2127 Bonds and securities are not subject to wear and tear within the meaning of the Federal income tax law, and therefore depreciation does not apply to any shrinkage in their value. Shrinkage in the value of securities, as such, does not constitute a loss actually sustained within the year, the amount of which is definitely ascertained. Therefore, under the rules of this office and consistent with the provisions of the law, a shrinkage in the value of bonds or like securities does not constitute an allowable deduction from gross income either as loss or depreciation.

The fact that bonds and similar securities were written off at the direction of the
2128 Comptroller of the Currency or the State banking department is not material. A mere book entry does not constitute either a loss or gain for the purpose of the income tax. The fact that bonds were written off does not necessarily imply that they are a total loss, nor is this act a conclusive proof that any loss occurred during the year for which the return is made.

2129 Losses of this character are only ascertainable when the securities mature, are disposed of, or cancelled. (T. D. 2152, Feb. 12, 1915.)

2130 Depreciation in Connection With Good-Will, Trade Marks, and Trade Brands.—"Good-will" represents the value attached to a business over and above the value of the physical property, and is such an intangible asset that it is not subject to wear and tear, and no claim for depreciation in connection therewith can be allowed. Any loss resulting from or on account of an investment in "good-will" can be determined only when the property or business to which the good-will attaches is sold or disposed of, in which case the profit or loss will be determined upon the basis of the value of the assets including good-will if acquired prior to March 1, 1913, or their cost if acquired subsequent to that date. (Art. 167, ¶494, Reg. 33, Rev., Jan. 2, 1918.) [¶2912.]

2131 Comment: We have been told that the last two lines above should read, "including good-will on March 1, 1913, if acquired prior to that date, or their cost if acquired subsequent to that date." (C. T. Co.)

2132 No deduction will be allowed for the depreciation of good-will, trade-marks, and trade brands. If such assets shall have been purchased at a determined price and shall be later sold at a price less than such cost, or less than their determined fair market value as of March 1, 1913, if acquired prior to that date, the amount by which the selling price is less than the cost or value, as the case may be, will be a loss deductible from the gross income of the year in which such assets were sold. (Art. 168, ¶495, Reg. 33, Rev., Jan. 2, 1918.)

2133 Loss on Inventory of Merchandise or Material. by Obsolescence or Damage.—No deductions from the inventory value of merchandise or material will be allowed except in cases in which the inventory includes goods or materials which by reason of obsolescence or damage are unsalable. When such deduction is claimed the facts connected therewith, including a statement of the cost of the goods, the value at which they were inventoried, and their present condition, must be filed with the return. (Art. 160, ¶481, Reg. 33, Rev., Jan. 2, 1918.)

2134 Merchandise.—Depreciation computed on total invoice cost of merchandise in stock is not an allowable deduction, except that if any portion of the merchandise in stock is unsalable by reason of obsolescence or damage, a depreciation deduction not in excess of the decline in value during the taxable year will be allowed. (Art. 169, ¶496, Reg. 33, Rev., Jan. 2, 1918.)

2135 Patents, Deduction for Return of Capital Invested Therein.—An allowable deduction for any given year for return of capital invested in patents at the time of issue will be an amount equal to one-seventeenth of the actual cost, in cash or its equivalent, of such patents. Where the patent has been secured from the Government, its cost will be represented by the various Government fees, cost of drawings, experimental models, attorneys' fees, etc., actually paid. Where the patent has been purchased for a cash consideration, the amount paid therefor would represent the capital invested therein. If the corporation purchased a patent and made payment therefor in stocks or other securities, the actual cash value of such stocks or other securities at the time of the purchase will represent the cost or capital invested in the patent. If the patent was purchased after a part of its life had expired, the cost for the purpose of a deduction for return of capital will be ratably spread over the remaining years of its life. If the patent becomes obsolete prior to its expiration, it will be permissible for the corporation to deduct from gross income such proportion of its original cost (less any amount previously charged off) as the number of years of its remaining life bears to the whole number of years intervening between the date it was acquired and the date it legally expires. In determining the amount deductible on account of the expiring life of patents only the actual cost thereof and not an estimated value as of March 1, 1913, or any other date, will be considered. (Art. 174, ¶552, Reg. 33, Rev., Jan. 2, 1918.) [¶2917.]

2136 Obsolescence of Models, Drawings, Etc., Deductible as a Loss.—If designs, drawings, patterns, or models result in the production of goods which prove to be salable for a certain length of time and then become obsolete and can not be sold, the amount expended for such designs, drawings, patterns, or models, less any amounts previously claimed as depreciation with respect to the same or as a return of capital, may, when charged off, be included in, and deducted as a loss incident to running the business, provided full and complete information is reported in a manner satisfactory to the Commissioner of Internal Revenue. (Art. 177, ¶555, Reg. 33, Rev., Jan. 2, 1918.) [¶2918.]

2137 Obsolescence Deductible, Cost Less Depreciation and Salvage.—Amounts representing losses on account of obsolescence of physical property may be included as a deduction from gross income as a loss, provided such amounts have been recorded in the books following the condemnation and withdrawal from use of the obsolete property. The amount of obsolescence that may be claimed as a deduction shall be ascertained by deducting from the cost of the property the total amount that has been previously claimed and deducted on account of the depreciation of the property, plus residual value at time of obsolescence, or plus the amount received from the sale of the property. The obsolescence deduction must not include the accumulated depreciation applicable to prior years. (Art. 178, ¶556, Reg. 33, Rev., Jan. 2, 1918.)

2138 Obsolescence When no Depreciation is Deducted.—If no depreciation has been charged off against such property and deducted from gross income of prior years, the amount allowable as a deduction for the year in which the property becomes obsolete shall be ascertained by deducting from the cost of the property its residual value, plus an amount equal to the depreciation actually sustained during the prior period and which might have been deducted when computed at the rate applicable to the same or similar property. The amount of depreciation thus arrived at as applicable to former years may be made the basis of amended returns and a claim for the refund of taxes overpaid by reason of the fact that no depreciation deduction was claimed in those years. (Art. 179, ¶557, Reg. 33, Rev., Jan. 2, 1918.)

2139 Rate for Computing.—No definite rate has been fixed by which an allowable deduction on account of depreciation in the value of any class of property subject to wear and tear is to be computed, but it is contemplated that this allowance shall be computed upon the basis of the cost of the property and the probable number of years constituting its life. The deduction to be allowed relates solely to loss due to use, wear and tear, and the matter of obsolescence is not relevant, inasmuch as when the property becomes obsolete a deduction for the loss sustained thereby, representing the difference between the cost and the amount of depreciation previously charged off or which should have been charged off in prior years, will be allowed. (See Arts. 178 [¶2137] and 179 [¶2138]). (Art. 162, ¶485, Reg. 33, Rev., Jan. 2, 1918.)

2140 Rate Based Upon Life.—In the case of buildings the deduction on account of depreciation shall not include any allowance for an estimated loss due to lessening of rental value, nor shall the computation of the deduction be influenced by the changed environment after a period of years, nor by its lack of adaptability to the use originally intended nor to any other outside influence affecting its value but an allowable depreciation shall be determined solely upon the estimated life of such buildings after making due allowance for ordinary repairs, the cost of which may be deducted as expenses for maintenance and operation. (Art. 162, ¶486, Reg. 33, Rev., Jan. 2, 1918.)

2141 The appended charge of the court to the jury in the District Court of the United States for the Southern District of New York, in the case of Hyman Cohen v. John Z. Lowe, collector, is published for the information of internal-revenue officers and others concerned. (T. D. 2343, June 14, 1916.)

2142 Summary of charge.

1. Depreciation Depends on Life of Building.

The physical loss or deterioration a building suffers during the tax year depends on the life of the building; how many years it would remain so as to be habitable for general purposes for which it was constructed.

2. Yearly Deductions.

The average amount of deduction each year covers the annual percentage.

3. Deductions for Improvements.

When allowance is made for depreciation of a building no deduction shall be allowed for expense of restoring the building or making good the exhaustion thereof.

4. Exhaustion, Wear and Tear.

The word "exhaustion, wear and tear" of a building contemplate only depreciation of the physical property itself, irrespective of its adaptability to the use originally intended or the changing environments.

5. Decrease in Rental Value.

No allowance can be made for depreciation by reason of decrease in rental value nor in value arising from lack of modern improvements.

Opinion of the Court in the Above Case.

[234 *Fed.* 474.]

The plaintiff was allowed 3 per cent for depreciation on an apartment house owned **2143** by him. The burden is on him to show that the depreciation so allowed was too small. This allowance is for the wear and tear suffered by the building during the tax year, which means the physical deterioration that the building suffered during that period. It does not take into account depreciation in value due to a loss in rental value because of the construction of more modern buildings with improved facilities or due to a change in the neighborhood. It is to be based upon the life of the building in the sense of the number of years the building would remain in a condition to be habitable for the use for which it was constructed and used; and which was in the instant case for an apartment house, and not merely the number of years it would stand without being condemned and torn down. The annual depreciation would be an amount represented by a fraction having one (tax year) for the numerator and the number of years, representing the ascertained life of the building, as the denominator. This assumes that there would be an average deterioration suffered each year during the life of the building, and that the plaintiff would keep the building in good repair during the life of it. This the law exacts of him. Upon these assumptions, and giving this meaning to the words of the statute, "a reasonable allowance for the exhaustion, wear and tear of the property, arising out of its use or employment in the business," the amount of the deduction allowed by the Government to the plaintiff on this account is deemed to be reasonable. (234 Fed. 474.)

2144 At what rates may depreciation be claimed and under what conditions? (Answer.)

As the rate at which depreciation may be claimed is dependent, in a greater or less extent, upon local conditions, the use to which the property is put, and its probable lifetime under normal business conditions, no specific rates at which it may be claimed have ever been established. The Law states that a "reasonable allowance" may be claimed and it is for the taxpayer to determine what constitutes a "reasonable allowance." To compute the amount which may be claimed, a taxpayer should determine the probable lifetime of the property, then divide its cost to him by the number of years it will be usable in a business in which employed, and the result thus obtained will represent the amount which may be claimed each year as a deduction, e. g., a frame building, the probable lifetime of which, without repair or replacement, is 25 years, cost $5,000. Divide $5,000 by 25, and claim $200 each year as depreciation.

While each taxpayer must determine the probable lifetime of his property without **2145** regard to the following figures, it has been estimated that the average usable lifetime of a frame building is 25 years, a brick building 35 years; a stone building or steel and concrete building, 50 to 100 years. The estimated lifetime of ordinary machinery is ten years, that of automobiles used for business or farm purposes and farm tractors, four to five years.

If a taxpayer wishes to claim the full amount of depreciation estimated to have **2146** occurred in the value of a building, or other property, used for business or trade purposes, he may do so, but this precludes his claiming a deduction to cover any amount expended during the same year in making repairs. If he wishes to claim a deduction on account of repairs, their cost must be deducted from the full amount of deprecia-

tion, and the balance may then be claimed as a deduction under the heading of Depreciation, that is, if the taxpayer expends $100 in making repairs to a building which will depreciate in value $200 during the calendar year, he may claim $100 as business expense and $100 as depreciation, or he may claim $200 as depreciation and nothing for repairs. In short, the aggregate deductions claimed on account of repairs and depreciation must not exceed the full amount of depreciation estimated to have occurred.

In claiming depreciation the following fundamental principles must be taken into
2147 consideration:

(a) Only such depreciation as results from exhaustion, wear and tear of property, arising out of its use or employment in business or trade, can be claimed. Depreciation in the value of a home or any article of property, such as automobiles used for personal pleasure or convenience, cannot be claimed; the property must be used for the purpose of producing income.

(b) Depreciation other than that arising from wear and tear, such as a lessening of values due to changes in the social or business conditions in the neighborhood in which a property is located, changes of street grade, or fluctuations in market values, etc., cannot be claimed.

(c) Depreciation in the value of land, whether improved or unimproved, due to erosion, exhaustion, or any other cause cannot be claimed.

(d) Where the value of a piece of machinery or any other asset is lessened by reason of the production of an improved machine or article, that depreciation cannot be claimed, as it does not result from exhaustion, wear and tear.

(e) Where, in the course of years, the owner of property has claimed its full cost as depreciation in his income tax returns, no further claim will be allowed. (Question 80, 1918 Income Tax Primer.)

2148 **Depreciation Allowance when Plant is Regularly Operated in Two Shifts or Continuously.**—Reference is made to your letter of the first instant in which you state that shipbuilding corporations and other industrial concerns have been engaged in a discussion as to whether or not this Department will, in connection with the income and excess-profits taxes, allow as a deduction depreciation at higher than normal rates in cases where two shifts are being worked, and the plant, machinery and equipment are operated sixteen or twenty-four hours a day in place of the usual eight or nine hours. ¶In reply you are informed that it is obvious that in a case where machinery and equipment are operated more than the usual number of working hours, a greater rate of depreciation would be applicable in determining the actual loss sustained by a corporation due to depreciation than would be the case in the event that the machinery was only operated eight or nine hours as the normal time. ¶Therefore you are informed that a greater rate of depreciation will be allowed in the case you mentioned but no definite rulings relative thereto can be given except in record cases which are presented to this office for consideration in connection with a full statement of facts and figures relative thereto. (Letter to E. G. Shorrock & Co., Seattle, Wash., signed by Deputy Commissioner L. F. Speer, and dated July 12, 1918.)

2149 **Unearned Increment.**—Unearned increment will not be considered in fixing the value on which depreciation shall be based. (Art. 146, Reg. 33, Jan. 5, 1914.)

2150 **Adjusting Excess Depreciation Charged Off in Previous Years.**—This office is in receipt of your letter of the 8th instant, in which you state that a corporation in its returns for the years 1911, 1912 and 1913 claimed depreciation of 12½% on the value of its machinery; that in 1917 an income tax inspector examined the books and recommended that depreciation at the rate of 5% be allowed and as a result additional taxes were assessed against the corporation for the years 1911, 1912 and 1913, based upon the increase in net income resulting from the reduction of depreciation from 12½ to 5%; and that another corporation engaged in the same line of business and using the same kind of machinery charged off 12% for depreciation on the same, but the books of this corporation were never examined and you ask what penalty, if any, the latter company will be required to pay for the years 1911, 1912 and 1913 if it now makes a claim that its calculations for such years were based on an excessive rate of depreciation. ¶In reply, you are informed that no penalty will attach to the corporation if it files amended returns reducing its depreciation deduction from 12½ to 5% on its machinery. The amended returns should be prepared and filed with the Collector of Internal Revenue for its district with a letter of transmittal, stating the reason the amended returns were filed. The Collector will then notify this office and an additional tax * * * will be assessed against the corporation due to the increase in its net income on account of the reduction of its depreciation deduction from 12½ to 5%. [Read ¶2151 following, which bears a later date than the above.] (Part of letter to the First National Bank, Cleveland, Ohio, signed by Deputy Commissioner L. F. Speer, and dated Nov. 16, 1917.)

2151 **Depreciation in Excess of Cost.**—If it develops that by reason of underestimating the life of the property or by overestimating the rate of deterioration an amount in excess of the yearly depreciation has been taken, the rate applicable to future years should at once be reduced and the balance of the cost of the property not provided for through a depreciation reserve should be spread over the estimated remaining life of the property. (Art. 165, ¶491, Reg. 33, Rev., Jan. 2, 1918.)

2152 **Use of Depreciation Reserve.**—Depreciation set up on the books and deducted from gross income can not be used for any purposes other than in making good the loss sustained by reason of the wear and tear of the property with respect to which it is claimed.

If, however, an investment is made in extensions, additions, or betterments of the **2153** company's own property, representing a part or the whole of the credit balance of the depreciation reserve account, such investment will not be considered a misuse or diversion of the depreciation deduction otherwise allowable. (Art. 164, ¶489–490, Reg. 33, Rev., Jan. 2, 1918.)

2154 **Investment of Depreciation Reserve Funds.**—The "second" paragraph under Sec. 12 of Title I of the Act of September 8, 1916, authorizes corporations, joint-stock companies, etc., in making their returns of annual net income, to deduct from gross income—

> "all losses actually sustained and *charged off* within the year * * * including a reasonable allowance for the exhaustion, wear and tear of property, arising out of its use or employment in the business or trade"

and in the case of oil and gas wells and mines, a reasonable allowance for depletion of natural deposits.

The essential requirements of this provision are that the amount deductible on **2155** account of depreciation and depletion shall be *charged off* and shall be reasonable allowances—that is, an amount sufficient to make good the loss due to these causes. The phrase "charged off" contemplates that the "reasonable allowance" deducted from gross income on account of depreciation or depletion, shall be credited to appropriate reserve accounts and carried as a liability against the assets, to the end that when the total of these credits equals the capital investment account, no further deductions on these accounts will be allowed.

2156 While the presumption is that amounts credited to these accounts will be used to make good the loss sustained, either through a renewal or replacement of the property or a return of capital, there is no requirement of law that the funds represented by these reserve liabilities shall be held intact or remain idle against the day when they may be used in making good the depreciation of the property with respect to which the deduction is claimed, or in restoring the capital invested in the depleted assets.

The conversion of the depreciation reserve into tangible assets will not constitute **2157** such a diversion as would deny the corporation the right of deduction, provided in all cases, that the deduction claimed in the return is a reasonable allowance, that is, a fair measure of the loss due to "exhaustion, wear and tear of property, growing out of its use" and is charged off or so entered upon the books as to constitute a liability against the assets with respect to which the depreciation deduction is claimed.

To the extent that Articles 130, 132, and 133 of [original] Regulations No. 33 are in **2158** conflict with the foregoing, they are hereby rescinded, and this decision is made applicable to the adjustment of returns of annual net income made pursuant to the requirements of Section 38, Act of August 5, 1909, Section 2 of the Act of October 3, 1913, and the present income tax law, except that as to returns made under the first two Acts, the writing off of depreciation, if reasonable in amount, will not be insisted upon. (T. D. 2481, April 10, 1917.)

2159 **Diversion of Fund.**—If a corporation at the end of the year finds it has a certain net income, and, without making any provision for depreciation, distributes such net income among its stockholders as dividends, it will be estopped from claiming in its returns of annual net income for such year any deduction on account of depreciation unless it is shown conclusively that the property account has been reduced by the amount of depreciation claimed, or unless such amount has been credited to a depreciation reserve account, and such amount was in fact a reasonable allowance.

The depreciation allowance authorized by section 12 is intended to provide a fund **2160** out of which the loss due to use, wear, and tear may be made good, and the fund thus created can not be diverted to the payment of dividends; that is to say, a deduction made under the guise of depreciation can not measure a loss and at the same time be used in the payment of dividends. [Read at ¶2119.]

2161 The fact that no reserve was made for depreciation indicates that there is no loss on this account to be provided for. (Art. 161, ¶482–484, Reg. 33, Rev., Jan. 2, 1918.)

2162 **Sinking-Fund Reserve.**—When a corporation sets aside a part of its earnings for the purpose of creating a sinking fund with which to retire its bonded or other indebtedness, the annual additions to such funds are not allowable deductions from gross income as or in lieu of depreciation or on any other account. The earnings thus set aside are an asset of the corporation and any accretion thereto must be accounted for as income.

2163 This ruling will not, however, forbid the deduction from gross income of a reasonable allowance for depletion of natural deposits even though the amount so deducted be used in whole or in part in the payment of its bonded or other indebtedness. (Art. 166, ¶492–493, Reg. 33, Rev., Jan. 2, 1918.)

2164 Law ¶307. **A Reasonable Allowance for the Amortization of Certain Assets Assets (Special—Due to the War) is Deductible.**—"(8) In the case of buildings, machinery, equipment, or other facilities, constructed, erected, installed, or acquired, on or after April 6, 1917, for the production of articles contributing to the prosecution of the present war, and in the case of vessels constructed or acquired on or after such date for the transportation of articles or men contributing to the prosecution of the present war, there shall be allowed a reasonable deduction for the amortization of such part of the cost of such facilities or vessels as has been borne by the taxpayer, but not again including any amount otherwise allowed under this title or previous Acts of Congress as a deduction in computing net income."

2165 Law ¶308. **A Redetermination of the Amortization Deduction May be Effected.**—"At any time within three years after the termination of the present war the Commissioner may, and at the request of the taxpayer shall, reexamine the return, and if he then finds as a result of an appraisal or from other evidence that the deduction originally allowed was incorrect, the taxes imposed by this title and by Title III [war excess-profits tax] for the year or years affected shall be redetermined and"

2166 Law ¶309. **Adjustment of Under-Payment or Over-Payment of Taxes Due to Redetermination of Amortization Deduction.**—"the amount of tax due upon such redetermination, if any, shall be paid upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 252 [¶2488];"

[In connection with the above read at ¶2922.]

2167 Law ¶310. **A Reasonable Allowance for Depletion of Mines, Oil and Gas Wells, Other Natural Deposits, and Timber, and for Depreciation of Improvements, is Deductible.**—"(9) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case, based upon cost including cost of development not otherwise deducted:"

2168 Law ¶311. **Basis in the Case of Properties Acquired Prior to March 1, 1913.**—"*Provided,* That in the case of such properties acquired prior to March 1, 1913, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date:"

2169 Law ¶312. **Basis in the Case of Mines and Wells Discovered by the Taxpayer on or after March 1, 1913.**—"*Provided further,* That in the case of mines, oil and gas wells, discovered by the taxpayer, on or after March 1, 1913, and not acquired as the result of purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery, or within thirty days thereafter;"

2170 Law ¶313. **Depletion and Depreciation of Improvements Allowance to be Made in Accordance with Regulations.**—"such reasonable allowance in all the above cases to be made under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary."

2171 Law ¶314. **Depletion and Depreciation of Improvements Allowance to be Apportioned between the Lessor and the Lessee.**—"In the case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and lessee;"

[In connection with the above read at ¶2929.]

Comment.—[The following paragraphs, ¶2172 to ¶2214 being the Department's compilation of rulings on depletion, under the provisions of the Revenue Act of 1916 as amended by the Revenue Act of 1917, as originally issued in Regulations No. 33, Revised, January 2, 1918, are reprinted here merely that they may be before the reader pending the issuance by the Government of the Department's "rules and regulations" based on the new law provisions.] [Read at ¶2929.]

2172 Depletion of Oil and Gas Properties.—Sections 5 and 12 of the act of September 8, 1916, as amended by the act of October 3, 1917, authorize individuals and corporations owning and operating gas or oil properties, to deduct from gross income—

"A reasonable allowance * * * for actual reduction in flow and production,
2173 * * * provided that when the allowance authorized * * * shall equal the capital originally invested, or in case of purchase made prior to March 1, 1913, the fair market value as of that date, no further allowance shall be made."

The essence of this provision of law is that the owner or operator of this character
2174 of properties shall secure through an aggregate of annual depletion deductions, the return of the amount of capital actually invested, or an amount not in excess of the fair market value as of March 1, 1913, of the properties owned prior to that date.

For the purpose of determining the amount of capital to be returned through annual
2175 deductions, operators may be divided into two classes, (a) operators who own the fee, and (b) operators who own a lease or leases.

In the case of the operating fee owner, the amount returnable through depletion
2176 deductions is the fair market value of the property (exclusive of the cost of physical property) as of March 1, 1913, if acquired prior to that date, or the actual cost of the property if acquired subsequent to that date, plus, in either case, the cost of development (other than the cost of physical property incident to such development) up to the point at which the income from the developed territory equals or exceeds the deductible expenses.

In the case of a lessee, the capital thus to be returned is the amount paid in cash
2177 or its equivalent as a bonus or otherwise by the lessee for the lease, plus also all expenses incurred in developing the property (exclusive of physical property) prior to the receipt of income therefrom sufficient to meet all deductible expenses, after which time as to both owner and lessee, such incidental expenses as are paid for wages, fuel, repairs, hauling, etc., in connection with the drilling of wells and further development of the property, may, at the option of the operator, be deducted as an operating expense or charged to capital account.

If, in exercising this option, the individual or corporation charges the expense
2178 of drilling wells or further development to capital account, the same, in so far as such expense is represented by physical property, may be taken into account in determining a reasonable allowance for depreciation during each year until the property account thus augmented has been extinguished through annual depreciation deductions, after which no further deduction on this account will be allowed. In the case of a going or producing business, the cost of drilling nonproductive wells may be deducted from gross income as an operating expense. (Art. 170, ¶497-503, Reg. 33, Rev., Jan. 2, 1918.)

2179 Estimate of Probable Resources.—In the case of either an owner or lessee it will be required that an estimate, subject to the approval of the Commissioner of Internal Revenue, shall be made of the probable quantity of oil or gas contained in or to be recovered from the territory with respect to which the investment is made. The invested capital (value as of March 1, 1913, or cost, if acquired subsequent to that date, plus the cost of development, other than cost of physical property, up to the point of expense-paying production, in the case of an owner, and the amount actually paid for the lease plus cost of development, other than cost of physical property, up to the same point, in the case of a lessee) will be divided by the number of units of oil or gas so estimated to be contained in or to be recovered from the territory, and the quotient will be the per unit cost or amount of capital invested in each unit recoverable. This quotient, or per unit cost, when multiplied by the number of units removed from the territory during any one year, will determine the amount which may be allowably deducted from the gross income of that year on account of depletion of assets or as a return of invested capital until the total of such deductions shall equal the capital invested.

Every individual or corporation entitled to a deduction on account of the deple-
2180 tion of the property under operation or for a return of the capital invested with respect to the same shall keep an accurate ledger account, in which, in the case of fee owner, shall be charged the fair market value as of March 1, 1913, or the cost, if acquired subsequent to that date, of the oil or gas property, plus cost of development as hereinbefore defined, or, in the case of a lessee, the amount actually originally invested in the lease and its development. This account shall be credited with the amount claimed and allowed each year as a deduction on account of depletion or as a return of capital,

to the end that when the credits to the account equal the debits no further deduction on either account, with respect to this property and the capital invested therein, will be allowed. Or, in lieu of a direct credit to property account, the amount so claimed and allowed as a deduction may be credited to a depletion reserve account. (Art. 170, ¶504–505, Reg. 33, Rev., Jan. 2, 1918.)

2181 **Where Resources are Uncertain.**—If for any reason the quantity of oil or gas in the property can not be determined with any degree of certainty, the depletion deduction will be computed in accordance with the rule set out in Treasury Decision 2447, except that lessees may compute their deduction for return of capital (cost of lease and development) in the same manner as owners in fee; that is, they may extinguish such capital on the basis of the reduction in flow and production as compared with the preceding year, or, in the case of leasehold properties brought in or developed during the year, the depletion reduction may be computed on the basis of the decline in settled flow and production, as evidenced by tests and gauges made at the end of the year as compared with similar tests and gauges made at the time the settled flow was determined.

2182 For the purpose of computing the depletion the territory comprehended in a given lease will be considered the unit with respect to which the depletion deduction may be claimed and allowed.

2183 If the operator is the owner of the fee the value determined and set up as of March 1, 1913, or the cost of the property if acquired subsequent to that date, or, if the operator is a lessee, the amount actually paid for the lease, plus, in the case of both owner and lessee, the cost of subsequent development, exclusive of physical property, if such cost is capitalized, will be the basis for determining the depletion deduction or the deduction for return of capital for all subsequent years during the continuance of the ownership under which the value was fixed or by which the investment was made, and during such ownership there can be no revaluation for the purpose of this deduction if it should be found that the quantity of oil or gas in the property was underestimated at the time the value was fixed or the property was acquired, or at the time the lease contract was entered into or purchased.

2184 This rule will not, however, be so construed as to forbid an operator from redistributing the invested capital over the estimated number of units remaining in the territory under operation if a subsequent increase of invested capital should render this necessary in order to determine the amount of such capital applicable to each unit provided that when such redistribution is made the total capital invested will be reduced by the amount previously charged off and deducted on account of depletion or as a return of capital. (Art. 170, ¶506–509, Reg. 33, Rev., Jan. 2, 1918.)

2185 **Additional Depreciation for Machinery, Etc.**—Both owners and lessees operating oil or gas properties will, in addition to and separate from the deduction allowable for the depletion or return of capital as hereinbefore provided for, be permitted to deduct a reasonable allowance for depreciation of physical property, such as machinery, tools, equipment, pipes, etc., the amount deductible upon this account to be such an amount, based upon its capitalized value (cost) equitably distributed over its useful life, as will bring it to its true salvage value when no longer useful for the purpose for which such property was acquired.

2186 As to both fee owner and lessee, the capital invested in physical property, upon which the depreciation deduction is computed, should be segregated in the books of account from that invested in the oil or gas territory or in the lease or leases, with respect to which the deduction for depletion or return of capital is claimed, and credits for depreciation may be made in the same manner as hereinbefore provided for depletion. (Art. 170, ¶510–511, Reg. 33, Rev., Jan. 2, 1918.)

2187 **Statement Required.**—To each return made by an individual or corporation owning and operating oil or gas properties there should be attached a statement showing—

(1) (a) The fair market value of the property (exclusive of machinery, equipment, etc.) as of March 1, 1913, if acquired prior to that date, or (b) the actual cost of the property if acquired subsequent to that date;

(2) How the fair market value as of March 1, 1913, was ascertained;

(3) The estimated quantity of oil or gas in the sand at the time the value or cost was determined;

(4) Amount of capital applicable to each unit;

(5) The quantity of oil or gas produced during the year for which the return is made;

(6) Any other data which would be helpful in determining the reasonableness of the depletion deduction.

If the operator is a lessee that fact should be stated, and to the return made by such lessee there should be attached a statement showing—

(1) The amount of cash or its equivalent actually paid for the lease;
(2) The amount expended for development prior to the receipt of income from the output, sufficient to pay operating expenses;
(3) The total capital thus invested;
(4) The estimated quantity of oil or gas in the territory comprised in the lease;
(5) The amount of capital applicable to each unit;
(6) The number of units removed during the year for which the return is made, and other data that would be helpful in determining whether or not the deduction made for the return of capital is a reasonable allowance. (Art. 170, ¶512-525, Reg. 33, Rev., Jan. 2, 1918.)

2188 **Depletion.—Mines.**—Paragraphs "seventh" and eighth" of section 5 (a) and paragraph "second" of section 12 (a) of Title I of the act of September 8, 1916, authorize individuals and corporations to deduct from gross income "a reasonable allowance for exhaustion, wear and tear of property, and * * * (b) in the case of mines, a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made"; provided, that when the sum of the annual allowances for depletion equals the capital originally invested, or in case of purchase prior to March 1, 1913, the fair market value as of that date of the mineral "in place," no further allowance on this account shall be made.

2189 Ownership of the mine content at the time for which computation is made is an essential prerequisite to an allowable deduction for depletion.

2190 The deduction in the case of a lessee will be limited to an amount equal to the capital actually invested in the lease, without regard to value as of March 1, 1913, or any other date.

2191 The paragraphs of the title above referred to authorize in the case of mine owners two classes of deductions to take care of the wasting of assets, namely, (a) depreciation, (b) depletion. (Art. 171, ¶526-529, Reg. 33, Rev., Jan. 2, 1918.)

2192 **Deductions and Valuation.**—If the property was acquired by purchase or otherwise (other than by lease) prior to March 1, 1913, the amount of invested capital which may be extinguished through annual depletion deductions from gross income will be the fair market value of the mine property so acquired, as of March 1, 1913. The value contemplated herein as the basis for depletion deductions authorized by this title must not be based upon the assumed salable value of the output under current operative conditions, less cost of production, for the reason that the value so determined would comprehend the profits to be realized from operation of the property.

2193 Neither must the value determined as of March 1, 1913, be speculative, but must be determined upon the basis of the salable value *en bloc* as of that date of the entire deposit of minerals contained in the property owned, exclusive of the improvements and development work; that is, the price at which the natural deposits or mineral property as an entirety in its then condition could have been disposed of for cash or its equivalent.

2194 The *en bloc* value having been thus ascertained, an estimate of the number of units (tons, pounds, etc.) should be made. The *en bloc* value divided by the estimated number of units in the property will determine the per unit value, or amount of capital applicable to each unit, which, multiplied by the number of units mined and sold during any one year, will determine the sum which will constitute an allowable deduction from the gross income of that year on account of depletion.

2195 Deduction computed on a like basis may be made from year to year during the ownership under which the value was determined, until the aggregate *en bloc* value as of March 1, 1913, of the mine or mineral deposits shall have been extinguished, after which no further deduction on account of depletion with respect to this property will be allowed to the individual or corporation under whose ownership the *en bloc* value was determined. (Art. 172, ¶530-533, Reg. 33, Rev., Jan. 2, 1918.)

2196 **Fair Market Value, March 1, 1913.**—The precise detailed manner in which the estimated fair market value of mineral deposits as of March 1, 1913, shall be made must naturally be determined by each individual or corporation interested, and who is the owner thereof, upon such basis as must not comprehend any operating profits, the estimate in all cases to be subject to the approval of the Commissioner of Internal Revenue.

2197 In any case in which a corporation uses for purposes of its income return an estimate of the value of mines or of mineral lands or properties as of March 1, 1913, as the basis of computing amounts to be deducted for depletion or return of capital, this department in passing upon the accuracy and fairness of such estimate will attach due weight to the market value of the stock of the corporation on March 1, 1913, and also

to sworn statements as to the value of capital stock of the corporation filed at any time thereafter for purposes of the special excise tax on corporations based on value of their capital stocks imposed by Title IV of the Act of September 8, 1916.

2198 In any case in which any depletion deduction is computed on the basis of the cost or price at which any mine, mineral lands, or properties were acquired the corporation will be required upon request of the Commissioner of Internal Revenue to show that the cost or price at which the property was bought was fixed for purposes of a bona fide purchase or sale by which the property passed to an owner in fact as well as in form, different from the vendor. No fictitious or inflated cost or price will be permitted to form the basis of any calculation of a depletion deduction, and in determining whether or not the prices or cost at which any purchase or sale was made represented the actual market value of the property sold due weight will be given to the relationship or connection existing between the party or parties selling the property and the buyer thereof. (Art. 172, ¶534-536, Reg. 33, Rev., Jan. 2, 1918.)

2199 **Records to be kept.**—Every individual or corporation claiming and making a deduction for depletion of natural deposits shall keep an accurate ledger account, in which shall be charged the fair market value as of March 1, 1913, or the cost, if the property was acquired subsequent to that date, of the mineral deposits involved. This account shall be credited with the amount of the depletion deduction claimed and allowed each year, or the amount of the depletion shall be credited to a depletion reserve account, to the end that when the sum of the credits for depletion equals the value or cost of the property no further deduction for depletion with respect to this property will be allowed. The value determined and set up as of March 1, 1913, or the cost of the property if acquired subsequent to that date will be the basis for determining the depletion deduction for all subsequent years during the ownership under which the value was fixed, and during such ownership there can be no revaluation for the purpose of this deduction if it should be found that the estimated quantity of the mineral deposit was understated at the time the value was fixed or at the time the property was acquired.

2200 In cases wherein the quantity of the mineral deposit in the mine prior to March 1, 1913, can not be estimated with any degree of accuracy, it will be necessary, if depletion deductions are to be taken, for the individual or corporation owning the deposits, with the best information available, to arrive at the fair market value of the property as of March 1, 1913; that is, its fair cash value *en bloc*, if such value is believed to be other than its original cost, which value, during the period of the ownership under which it was determined, shall be final and shall be charged to the property account as hereinbefore indicated, and then, on the basis of the most probable number of units in the property, the per unit value shall be determined as the basis for computing annual depletion allowances, this method and allowances to be continued until, but not beyond, the time when the value as of March 1, 1913, shall have been extinguished. (Art. 172, ¶537-538 Reg. 33, Rev., Jan. 2, 1918.)

2201 **When to Use Original Cost Basis.**—The original cost of the mineral deposit may be taken as the basis for computing annual depletion deductions if the fair market value as of March 1, 1913, as hereinbefore required, can not be ascertained otherwise, allowance being made for minerals which may have been removed prior to that date.

2202 In cases wherein a mineral property was acquired subsequent to March 1, 1913, the same rule for computing the annual depletion deduction will apply, except that in such case the basis of the computation will be the actual cost rather than the value as of March 1, 1913.

2203 A lessee corporation is not entitled to any depletion deduction as such, but if such lessee, in addition to royalties, pays a stipulated sum for the right to explore, develop, and operate a mine, such sum may be spread ratably over the estimated number of units in the mine, and thus ascertain the amount of invested capital or bonus payment applicable to each unit. The per unit cost thus ascertained will be multiplied by the number of units removed from the mine during any one year and the result will be the amount that may be deducted from the gross income of that year as a return of the capital invested. In the case of both mine owner and lessee no deduction for depletion or return of capital will be allowed when the invested capital has through the aggregate of all such deductions been extinguished. (Art. 172, ¶539-541, Reg. 33, Rev., Jan. 2, 1918.)

2204 **Lessee's Computation of Invested Capital.**—For the purpose of computing this deduction in the case of a lessee company, the actual amount of the bonus payment and not a value as of March 1, 1913, will be considered the invested capital to be returned through the aggregate of the annual deductions.

To the return made pursuant to the above rule there should be attached a statement
2205 setting out (1) whether the operator is a fee owner or lessee; (2) in the case of a fee owner, (a) the fair market value of the mineral deposits as of March 1, 1913, if the property was acquired prior to that date, (b) the cost of the mineral property if acquired subsequent to that date; (3) the method by which the value as of March 1, 1913, was determined, in case the property was acquired prior to that date; (4) the estimated quantity in units in the mine as of March 1, 1913, or at the date of purchase if acquired subsequent to that date; (5) amount of capital applicable to each unit; (6) the number of units removed and sold during the year for which the return was made; and (7) any other data which would be helpful in determining the reasonableness of the depletion deduction claimed in the return.

In the case of a lessee, the statement should show (a) the amount of the bonus
2206 or other payment made for the right to operate the mine; (b) the period covered by the lease, and the estimated quantity of units in the mine when the lease contract was entered into.

In addition to the deduction hereinbefore provided for, the operator will be per-
2207 mitted to deduct from the gross income of each year a reasonable allowance for depreciation of all physical property used in connection with the operation of the mine, and owned by the operator. For this purpose the actual cost (not value) will be equitably distributed over the useful life of such property until the true salvage value has been reached.

Both owner and lessee will keep accurate ledger accounts to which will be charged
2208 the capital invested in the mine or lease and in machinery, equipment, etc., crediting such accounts or a depletion and depreciation reserve account, with the amount claimed and allowed as a deduction each year until as a result of such credits the capital charge shall be extinguished, after which no further deduction on these accounts will be allowed. (Art. 172, ¶542-546, Reg. 33, Rev., Jan. 2, 1918.)

2209 **Depletion—Timber.**—In the case of timberlands, the fair market price or value of timber standing March 1, 1913, or the cost of the timber where the purchase was made subsequent to March 1, 1913, will be the basis for calculation of depletion, and this value as of March 1, 1913, or cost when subsequently purchased, is not to be exceeded for purposes of deduction in returns of income. The whole of such value is to be distributed over the entire amount of standing timber on these respective dates. See Art. 173 [¶2210] of these regulations for rule of calculation. (Art. 8, ¶125, Reg. 33, Rev., Jan. 2, 1918.) Read at ¶2955.]

2210 Corporations owning timber land and logging off the timber and manufacturing it into lumber, will, if the timber was acquired prior to March 1, 1913, be permitted to exclude from gross income either through a deduction from gross receipts or through a charge into the cost of manufacturing the timber into lumber, an amount equivalent to the fair market price or value of the standing timber as of March 1, 1913.

In order to secure the benefit of this deduction such corporations must set up on
2211 their books as of March 1, 1913, the fair market price *en bloc*, of all the timber then owned by them, and then, by dividing this *en bloc* value by the estimated number of feet (board measure) in the entire timber holdings, the per unit value or price as of March 1, 1913, will be ascertained, which per unit price or value will be the basis for measuring the amount which may be added to the cost of manufacture, or deducted from gross income, until the *en bloc* value of the entire holding as of March 1, 1913, shall have been extinguished, after which no further deduction on this account shall be allowed.

The same rule will apply in the case of timber or timber lands purchased subse-
2212 quent to March 1, 1913, the only difference being that *actual cost*—that is, the gross purchase price—shall, in making the computation, be substituted for *en bloc* price or value as of that date. If the entire market price or value of both timber and lands as of March 1, 1913, or the entire cost, if acquired subsequent to that date, is extinguished through a deduction from gross income for timber used, or through a per unit charge to cost of manufacturing lumber, then the entire amount realized from the logged-off lands or for other salvage will be returned as income of the year in which such lands are sold or disposed of.

If the timber or timber lands are sold *en bloc*, the gain or loss will be ascertained on
2213 the basis of the difference between the fair-market price, or cost, and the selling price, according as the property was acquired prior or subsequent to March 1, 1913.

The fair market price or value of timber or timber lands as of March 1, 1913, is
2214 the price at which the property in its then condition, and with the circumstance then surrounding it could have been sold. for cash or its equivalent. This value must not be speculative, but must be determined without taking into account any prospective profits that may result from the manufacture of the timber into lumber. It must be, as the law contemplates, a fair market value and, once determined, must be set up

on the books and, as the measure of a stumpage deduction for income-tax purposes, must remain constant and can not be increased except as new purchases are made at a higher average cost. The value so set up as of March 1, 1913, will be subject to the approval of the Commissioner of Internal Revenue. (Art. 173, ¶547–551, Reg. 33, Rev., Jan. 2, 1918.)

2215 Law ¶319. **Adjustment for Substantial Losses Sustained in the Taxable Year 1919 Because of Material Reduction of Inventory Values for 1918, or Because of Certain Rebate Payments.**—"(14) (a) At the time of filing return for the taxable year 1918 a taxpayer may file a claim in abatement based on the fact that he has sustained a substantial loss (whether or not actually realized by sale or other disposition) resulting from any material reduction (not due to temporary fluctuation) of the value of the inventory for such taxable year,"

2216 Law ¶320.—"or from the actual payment after the close of such taxable year of rebates in pursuance of contracts entered into during such year upon sales made during such year."

2217 Law ¶321.—"In such case payment of the amount of the tax covered by such claim shall not be required until the claim is decided, but the taxpayer shall accompany his claim with a bond in double the amount of the tax covered by the claim, with sureties satisfactory to the Commissioner, conditioned for the payment of any part of such tax found to be due, with interest. If any part of such claim is disallowed then the remainder of the tax due shall on notice and demand by the collector be paid by the taxpayer with interest at the rate of 1 per centum per month from the time the tax would have been due had no such claim been filed."

2218 Law ¶322.—"If it is shown to the satisfaction of the Commissioner that such substantial loss has been sustained, then in computing the taxes imposed by this title and Title III the amount of such loss shall be deducted from the net income."

2219 Law ¶323.—"(b) If no such claim is filed, but it is shown to the satisfaction of the Commissioner that during the taxable year 1919 the taxpayer has sustained a substantial loss of the character above described then the amount of such loss shall be deducted from the net income for the taxable year 1918 and the taxes imposed by this title and by Title III for such year shall be redetermined accordingly. Any amount found to be due to the tax-payer upon the basis of such redetermination shall be credited or refunded to the taxpayer in accordance with the provisions of section 252 [¶2488]."

[In connection with the above read at ¶1963.]

2220 Law ¶456. **Liberty and Other United States Bonds as Security in Connection with "Penal Bonds."**—"Sec. 1320. That wherever by the laws of the United States or regulations made pursuant thereto, any person is required to furnish any recognizance, stipulation, bond, guaranty, or undertaking, hereinafter called "penal bond," with surety or sureties, such person may, in lieu of such surety or sureties, deposit as security with the official having authority to approve such penal bond, United States Liberty bonds or other bonds of the United States in a sum equal at their par value to the amount of such penal bond required to be furnished, together with an agreement authorizing such official to collect or sell such bonds so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. The acceptance of such United States bonds in lieu of surety or sureties required by law shall have the same force and effect as individual or corporate sureties, or certified checks, bank drafts, post-office money orders, or cash, for the penalty or amount of such penal bond. The bonds deposited hereunder, and such other United States bonds as may be substituted therefor from time to time as such security, may be deposited with the Treasurer, or an Assistant Treasurer of the United States, a Government depository, Federal Reserve bank, or member bank, which shall issue receipt therefor, describing such bonds so deposited. As soon as security for the performance of such penal bond is no longer necessary, such bonds so deposited, shall be returned to the depositor: *Provided,* * * *."

2221 Law ¶457.—"*Provided further,* That nothing herein contained shall affect or impair the priority of the claim of the United States against the bonds deposited or any right or remedy granted by said Acts or by this section to the United States for default upon any obligation of said penal bond:"

2222 Law ¶458. "*Provided further,* That all laws inconsistent with this section are hereby so modified as to conform to the provisions hereof:"

2223 Law ¶459. "*And provided further*, That nothing contained herein shall affect the authority of courts over the security, where such bonds are taken as security in judicial proceedings, or the authority of any administrative officer of the United States to receive United States bonds for security in cases authorized by existing laws."

2224 Law ¶460. "The Secretary may prescribe rules and regulations necessary and proper for carrying this section into effect."

2225 **Tax on Insurance Companies.**—[Comment: Same provisions in general as for other corporations. For the exceptions, see below.]

2226 In ascertaining the net income of an insurance company, for the purpose of the tax imposed by this title, the general provisions contained in the law and elsewhere in these regulations will be observed, except as modified by specific legislation or regulations concerning insurance companies. (Art. 239, ¶684, Reg. 33, Rev., Jan. 2, 1918.)

2227 **Exempted Organizations.**—There are exempted under the provisions of the act fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such societies, orders, or associations or their dependents; and farmers' and other mutual hail, cyclone, or fire insurance companies, or like organizations of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting expenses.

A society or association "operating under the lodge system" is considered to be one
2228 organized under a charter, with properly appointed or elected officers, with an adopted ritual or ceremonial, holding meetings at stated intervals, and supported by fees, dues, or assessments.

It is not sufficient that companies of the foregoing classes merely claim exemption,
2229 but it must be shown by affidavit or otherwise to the satisfaction of the Commissioner of Internal Revenue that the conditions set forth in the exempting provisions have been fully met. [See ¶1754.] (Art. 239, ¶681-683, Reg. 33, Rev., Jan. 2, 1918.)

2230 **Gross Income of Insurance Companies.**—[Sec. 230 (a), ¶1662, provides that in the case of corporations, which includes insurance companies, "gross income" means the gross income as defined in section 213, ¶763, except as shown below at ¶2256 for life insurance companies and at ¶2264 for mutual marine insurance companies.]

2231 Gross income of insurance companies consists of the total revenue derived from the operation of the business, including income, gains, or profits from all other sources, within the calendar year for which the return is made, except as modified by the special provisions of law which apply to insurance companies.

Gross income, as defined above, will include net premiums, investment income,
2232 income from the sale of capital assets, all gains, profits, and income as reported to the State insurance departments, except the items specifically exempted in the act, as construed by these regulations. (Art. 239, ¶673–674, Reg. 33, Rev., Jan. 2, 1918.)

2233 Amounts representing reinsurance treaties will be eliminated from income and disbursements.

2234 Deposit premiums on perpetual risks received and returned should be treated in the same manner, as no reserve will be considered covering liability for such deposits, but the earnings on such deposits will be included in the premium income.

For the purpose of ascertaining the gain or loss from sale or other disposition of
2235 ledger assets acquired prior to March 1, 1913, to fair market price or value of such assets as of March 1, 1913, shall be the basis for determining the amount of such gain or loss to be accounted for in the return of the year in which the assets are sold. If acquired subsequent to March 1, 1913, then the profit or loss to be returned or claimed will be the difference between the cost and the selling price.

2236 Reinsurance and return premiums should not be included in gross income nor in deductions. (Art. 239, ¶677–680, Reg. 33, Rev., Jan. 2, 1918.)

2237 **Exempted Income.**—There is specifically exempted from taxation interest received on obligations of the United States or its possessions, or on the obligations of a State or any political subdivision thereof. Therefore, in ascertaining gross income for the purposes of the tax, all interest received from such sources should be eliminated. (Report to State, schedule D, parts 1 and 4.) As accrued interest on bonds purchased is not included in the interest income reported to the State insurance department, it must not be

included in the amount eliminated from gross income in the return. (Report to State, schedule D, part 3.) In the case of obligations of the United States issued after September 1, 1917, income from such obligations is exempt from tax only to the extent provided in the act authorizing their issue. Income from such obligations received by insurance companies is exempt from the [12] per cent and [10] per cent income tax. (Art. 239, ¶675, Reg. 33, Rev., Jan. 2, 1918.)

2238 **General Deductions Allowed to Insurance Companies.**—The following deductions from gross income will be allowed in returns made by insurance companies other than mutuals but including mutual life and mutual marine.

2239 All ordinary and necessary expenses paid within the year in the maintenance and operations of the company and its properties.

2240 **Interest.**—Interest paid on indebtedness wholly secured by property collateral the subject of sale or hypothecation in the ordinary business of the company as a dealer only in the property constituting such collateral or in the loaning of funds thereby produced is an allowable deduction as a business expense to an amount of the interest paid on such indebtedness not in excess of the actual value of the collateral securing it. [All interest paid or accrued on indebtedness is now deductible as interest, with one exception, ¶7027.]

2241 **Incidental Repairs.**—Expenditures for incidental repairs which do not add to the value nor appreciably prolong the life of property are deductible as expenses, but expenditures for new buildings, permanent improvements, or betterments which increase the value of property, or for restoring or replacing property, are not deductible under this or any other item of the return. Such expenditures are properly chargeable to capital account, to be extinguished through annual depreciation allowances.

2242 **Cost of Furniture.**—Insurance companies will be permitted to add to expenses, in lieu of depreciation of furniture and fixtures, the actual cost of repairs, replacements, and renewals of such furniture as is reported to the State insurance department. Provided that in case of an original investment the cost thereof shall be charged to capital account.

2243 **Premiums Paid.**—Premiums paid on life insurance policies covering the lives of officers, employees, or those financially interested in any trade or business conducted by an individual, partnership, corporation, joint-stock company or association, or insurance company, shall not be deducted in computing the net income of insurance companies.

2244 **Losses Actually Sustained.**—Losses deductible (other than policy payments) must be distinguished from depreciation or allowances for exhaustion, wear and tear. The losses must be absolute, complete, actually sustained during the year, and charged off on the books of the company, and if the losses result from the sale of assets acquired prior to March 1, 1913, such losses shall be ascertained by taking the difference between the fair market price or value as of March 1, 1913, and the selling price. If the assets were acquired subsequent to March 1, 1913, the loss will be the amount by which the selling price is less than the *cost*.

2245 Losses compensated by insurance or otherwise are not deductible.

2246 **Agency Balances.**—There may also be deducted losses from agency balances or other amounts charged off as worthless, and losses by defalcation, premium notes voided by lapse, provided such notes have at some time been included in gross income for income tax purposes; otherwise, they will not be deductible. (Art. 240, ¶685–693, Reg. 33, Rev., Jan. 2, 1918.)

2247 **Taxes Paid For Stockholders.**—Taxes paid by companies on the value of their capital stock outstanding and in the hands of stockholders are not deductible. Such taxes are a primary liability of the stockholders and therefore chargeable against their (the stockholders') income.

2248 **Dividends From Foreign Corporations.**—Insurance companies claiming as a deduction from gross income, for the purpose of the * * * income tax, dividends received from foreign organizations must accompany their returns by a list giving the names of such organizations and the amount received from each. (Art. 240, ¶696–697, Reg. 33, Rev., Jan. 2, 1918.)

2249 Law ¶315. **Special Deductions Allowed to Insurance Companies in General.**—"(10) In the case of insurance companies, in addition to the above [i. e., the general deductions allowed to all corporations]: (a) The net addition required by law to be made within the taxable year to reserve funds (including in the case of assessment insurance companies the actual deposit of sums with State or Territorial officers pursuant to law as additions to guarantee or reserve funds); and (b) the sums other than dividends paid within the taxable year on policy and annuity contracts;"

2250 Policy Losses.—As payments on policies there should be reported all death, disability, or other policy claims (other than dividends) paid within the year, including fire, accident, and liability losses, matured endowments, annuities, payments on installment policies, surrender values, and all claims actually paid under the terms of policy contracts.

2251 Net Addition to Reserve Funds.—*All policy premiums, on which net addition to reserve is computed, must be included in gross income.* The net addition may be based upon the highest authorized reserve by the statutes of any States in which the company does business. When the reserve at the end of the year is less than at the beginning of the year there is a "released reserve," and the amount so released must be included in gross income. In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds shall be treated as being payments required by law to reserve funds. In the case of life insurance companies, the net addition to the "reinsurance reserve" and the "reserve for supplementary contracts," and in the case of fire, marine, accident, liability, and other insurance companies, the net addition to the "unearned-premium reserves," and only such other reserves as are specifically required by the statutes of the States within which the company is doing business will be allowed as deductions. (Art. 240, ¶694–695, Reg. 33, Rev., Jan. 2, 1918.)

2252 Decision of U. S. Supreme Court.—The appended decision [captions only] of the Supreme Court is published for the information of internal-revenue officers and others concerned. (T. D. 2501, June 18, 1917.)

(Act of Aug. 5, 1909.)

1. Reserve Against Unpaid Losses.
   Fire insurance companies not "required by law" of Pennsylvania to hold a reserve against unpaid losses within the meaning of the act of Congress.
2. Reserve Funds Required by Law.
   The words "reserve funds" as used in the act of Congress, have reference to the funds ordinarily held as against the contingent liability on outstanding policies. (McCoach vs. Insurance Company of America. (244 U. S. 585.) T. D. 2501, June 18, 1917.)

2253 Decision of U. S. Court of Claims.—The appended decision [captions only] of the United States Court of Claims in the case of the Maryland Casualty Co. v. United States is published for the information of internal-revenue officers and others concerned. (T. D. 2451, Feb. 20, 1917.)

Maryland Casualty Co. v. *United States.*

(Acts of Aug. 5, 1909 and Oct. 3, 1913.)

Court of Claims of the United States. No. 33,191. [Decided February 12, 1917.]

1. Income Means Receipts in Cash.
   Income means what has come in or receipts.
2. Receipt by Agent is Receipt by Principal.
   Company obligated to report in full the total sums received in cash, both amounts received at the home office and those paid to its lawful agencies during the calendar year.
3. Net Addition to Reserve Funds.
   Only the net addition to reserve funds required by State statutes is deductible from gross income. No State law has been pointed out which requires the maintenance of reserve fund to secure payments of taxes, salaries, and brokerage and agents' commissions.
4. Decreases in Reserve Funds.
   Reserve funds when released are in their very essence income.

2254 Law ¶316. Life, Health, and Accident Insurance Combined in One Policy.—"(11) In the case of corporations issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan continuing for life and not subject to cancellation, in addition to the above [i. e., the general deductions allowed to all corporations and the special deduction allowed to all insurance companies, ¶2249] such portion of the net addition (not required by law) made within the taxable year to reserve funds as the Commissioner finds to be required for the protection of the holders of such policies only;"

2255 Assessment Life and Accident Insurance Companies; Stock Fire Insurance Companies; Stock Casualty, Fidelity, and Surety Insurance Companies; Miscellaneous Stock Companies.—Companies of the foregoing classes will make their returns in accordance with articles applicable to insurance companies in general. (Art. 245, ¶713, Reg. 33, Rev., Jan. 2, 1918.)

2256 Law ¶282. **Life Insurance Companies.—Premium Income Paid Back.**—"(1) In the case of life insurance companies there shall not be included in gross income such portion of any actual premium received from any individual policyholder as is paid back or credited to or treated as an abatement of premium of such policyholder within the taxable year."

2257 Life insurance companies are authorized to omit from gross income such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to the policyholder or treated as an abatement of his premium.

2258 The amount authorized by this provision to be excluded from gross premium income on account of any premium refunded to any individual policyholder is explicitly limited to an amount not in excess of the actual premium paid by the individual policyholder within the tax year. (Art. 241, ¶700-701, Reg. 33, Rev. Jan. 2, 1918.)

2259 **Cash Dividends.**—Life insurance companies are entitled under the foregoing holding to exclude from gross income any part of the premium received which is paid back to the individual policyholder within the same return year. Where the dividend is in excess of the premium received, there can be excluded from gross income only the amount of the premium received from such individual policyholder within the same return year.

2260 **Dividends Provisionally Ascertained.**—Dividends provisionally ascertained, apportioned, or credited on deferred dividend policies can not be excluded or deducted from gross income for the reason that the assured has no vested or enforceable right in them and can not, at the time of the ascertainment, apportionment, or credit, nor until the maturity of the policy, avail himself of such dividends; and in the event of the death of the assured prior to the expiration of the deferred dividend period, the amount so ascertained, apportioned, or credited lapses. (Art. 241, ¶702–703, Reg. 33, Rev., Jan. 2, 1918.)

2261 **Decision of District Court.**—Brief Summary: In rendering judgment for the plaintiff Judge Dickinson held that no matter during what year premiums had been received by mutual life insurance companies, those portions of such premiums, with any accretions thereto, which are returned to policyholders may be excluded from the gross income of the insurance company for the year in which returned, the fact being that in the case of such mutual life insurance companies the actual cost only of insurance is paid by the policyholders and returns of parts of premiums with interest are merely periodic refunds of excess amounts paid in. (Penn Mutual Life Insurance Company vs. Lederer, Act of Oct. 3, 1913. U. S. District Court, E. D. Pennsylvania (247 Fed. 559), February 4, 1918.)

2262 **Surrender Values.**—Gross income of life insurance companies should include, in addition to income heretofore defined, surrender values applied in any manner, consideration for supplementary contracts involving and not involving life contingencies, and all other income, gains or profits.

2263 Applied surrender values and consideration for supplementary contracts, not involving life contingencies included in income will, of course, be deducted as payments under policy contracts; but for convenience in verifying the returns these items should appear in the return in both gross income and deductions. (Art. 241, ¶698–699, Reg. 33, Rev., Jan. 2, 1918.)

2264 Law ¶283. **Mutual Marine Insurance Companies.—Gross Income.**—"(2) Mutual marine insurance companies shall include in gross income the gross premiums collected and received by them less amounts paid for reinsurance."

2265 Law ¶317. **Mutual Marine Insurance Companies.—Special Deduction Authorized.**—"(12) In the case of mutual marine insurance companies, there shall be allowed, in addition to the deductions allowed in paragraphs (1)* to (10)*, inclusive, amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment and the payment thereof;"

*(1) to (9)—General deductions allowed to all corporations, beginning at ¶1943. (10)—Special deductions allowed to all insurance companies, ¶2249.

2266 Mutual marine insurance companies may include in their deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the date of ascertainment thereof and the date of payment thereof, such amounts and interest having been included in gross

income, which amounts deducted from gross income should be fully set forth in the supplementary statement of the return form. (Art. 243, ¶710, Reg. 33, Rev., Jan. 2, 1918.)

2267 Law ¶318. **Mutual Insurance Companies Other than Mutual Life and Mutual Marine.**—"(13) In the case of mutual insurance companies (other than mutual life or mutual marine insurance companies) requiring their members to make premium deposits to provide for losses and expenses, there shall be allowed, in addition to the deductions allowed in paragraphs (1)* to (10)*, inclusive, (unless otherwise allowed under such paragraphs)the amount of premium deposits returned to their policyholders and the amount of premium deposits retained for the payment of losses, expenses, and reinsurance reserves;"

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*(1) to (9)—General deductions allowed to all corporations, beginning at ¶1943. (10—Special deductions allowed to all insurance companies, ¶2249.

2268 The foregoing provision [The Act of September 8, 1916, provided: "That mutual fire and mutual employers' liability and mutual workmen's compensation and mutual casualty insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return, etc."] is construed to embrace all mutual insurance companies (other than mutual life and mutual marine and companies exempt); interinsurance and reciprocal exchanges and returns of annual net income should be made on the special form (No. 1030a) provided for that purpose.

2269 **Gross Income.**—Gross income of such companies will consist of the total revenue derived from the operation of the business but *excluding* all income received from premiums, assessments, fees, and other amounts paid by the policyholders necessary to secure or continue the policy in force. If, however, any portion of the funds thus received is retained or finally used for any purpose other than the payment of losses, expenses, or reinsurance reserves, such portion is, by the terms of the law, taxable and must be returned as income.

2270 **Rent Income.**—All payments received in cash or its equivalent, as rent on buildings or other property owned or controlled by the company making the return, must be returned as taxable income, after deducting the amount paid for repairs and expenses, including taxes (levied for purposes other than local benefits) *as has been expended on the property from which the rental income returned was derived.*

2271 **Sale of Capital Assets.**—The profit or income to be returned in the event of the sale or maturity of capital assets acquired prior to March 1, 1913, should be determined upon the basis of the difference between the fair market value of such assets as of that date and the selling price thereof. If the assets were acquired subsequent to March 1, 1913, the loss will be the amount by which the selling price is less than the *cost*. This profit or income may, for the purpose of the tax, be reduced by the amount of any loss resulting from the same source and ascertained in the same manner. In no event can a loss resulting from the sale or maturity of capital assets exceed the gain within the year from like transactions.

2272 **Other Income.**—All other income or earnings not hereinbefore referred to will form a part of and must be reported as taxable income. (Art. 242, ¶705–709, Reg. 33, Rev., Jan. 2, 1918.)

2273 **Foreign Insurance Companies.**—Insurance companies organized, authorized, or existing under the laws of any foreign government shall report as gross income the gross amount received within the year from all sources within the United States or its possessions. Income from business transacted by a United States branch or agency of a foreign insurance company which relates to a foreign country must be returned as gross income. Otherwise articles applicable to insurance companies in general will be followed as to income and deductions.

2274 **Income from Investment.**—Insurance companies organized, authorized, or existing under the laws of any foreign government, not transacting an insurance business in the United States or its possessions but receiving income from investments therein must make returns of such income, deducting therefrom the amount of such income [the tax on which has been] withheld at the source. [Dividends are now deductible, ¶2102.] (Art. 244, ¶711-712, Reg. 33, Rev., Jan. 2, 1918.)

2275 **Returns by Insurance Companies.**—Except as otherwise specially provided in the law or in these regulations, the general regulations hereinbefore provided for the use of corporations, joint-stock companies, or associations will be observed by insurance companies in making their returns. (Art. 246, ¶714, Reg. 33, Rev., Jan. 2, 1918.)

2276 **Returns to Conform to State Reports.**—Returns of insurance companies must be rendered in conformity with reports made for the same period to the State insurance departments. As all insurance companies are required by law to render their reports to the various State insurance departments for the calendar year, their returns of annual net income for the purpose of the income tax should be made for the same period, unless their books are actually kept on a fiscal-year basis.

Treasury Decision 2433, [¶1928], providing that returns may be made on a basis
2277 other than as above set forth, is not applicable to insurance companies. (Art. 239, ¶671-672, Reg. 33, Rev., Jan. 2, 1918.)

2278 **Copy of Report to State.**—As an assistance in auditing the returns, wherever possible, a copy of the report to the State insurance department should be submitted with the returns; otherwise schedule D, parts 1, 3, and 4, of the report should be attached thereto showing Federal, State, and municipal obligations from which the interest omitted from gross income was derived. (Art. 239, ¶676, Reg. 33, Rev., Jan. 2, 1918.)

General Law Provisions and Applicable Regulations Relating to Returns.—[Read at ¶1434.]

General Law Provisions and Applicable Regulations Relating to the Payment of of the Tax.—[Read at ¶2339.]

2279 **Tax on Foreign Corporations.**—[The rate is the same as for domestic corporations, for which see ¶1682.]

2280 Law ¶5. **What Constitutes a Foreign Corporation.**—"The term 'foreign' when applied to a corporation or partnership means created or organized outside the United States;"

2281 Law ¶6. "The term 'United States' when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia;"

Foreign Corporations not Engaged in Trade or Business within the United States and not Having any Office or Place of Business therein.—[Against such, the tax is, in large measure, withheld at the source, ¶572.]

2282 **"Exempt Corporations" Includes Foreign as Well as Domestic Corporations.**—This office is in receipt of your letter of the 30th ultimo in which you ask whether or not foreign corporations of the nature specified in Section 11, under the heading "Conditional and Other Exemptions" [¶1739] will also come within that heading, you are informed that the section referred to provides that the income of the corporations enumerated therein shall not be taxed and therefore it follows that if the corporations are not subject to tax they will not be required to file corporate returns, and it is held by this office that the exemption applies to foreign as well as to domestic corporations.

Corporations similar to those enumerated in the several subsections of Section 11
2283 are not necessarily exempt from making returns of annual net income and can not be classed as exempt corporations until they have set out, in the form of an affidavit, either to the Collector of Internal Revenue for their districts or to this office the purpose and nature of the organization, the source of its income, the disposition of the same, and whether or not any of its net income will ever inure to the benefit of any private stockholder or individual. Upon receipt of such affidavit the corporation, either domestic or foreign, will be definitely advised as to its status, under the requirements of the law. (Letter to The Central Trust Company of New York, New York, signed by Commissioner W. H. Osborn, and dated November 1, 1916.)

2284 Receipt is acknowledged of your letter of November 17, 1916, and in reply you are advised that the Federal Income Tax Law of September 8, 1916, provides that every organization enumerated in Section II of that statute is exempt from Federal Income Tax on its net earnings, profits or income, and the office holds that the provisions apply whether the organization be domestic or foreign. In a case where a foreign organization desires to be held exempt from Federal income tax, and a doubt exists as to whether or not it comes within the class of organizations enumerated in Section II, it will be required to file a copy of its charter and by-laws, and an affidavit executed by its principal officer

showing the disposition made of such income as it receives, and stating specifically, whether or not any of the income so received inures to the benefit of any individual stockholder. The question of whether or not the office will hold the organization to be "exempt" will be determined by the facts shown in its charter, by-laws and affidavit. (Letter to The Corporation Trust Company, signed by Commissioner W. H. Osborn, and dated December 6, 1916.)

2285 Law ¶280. **Net Income of a Foreign Corporation Defined.**—"Sec. 232. That in the case of a corporation subject to the tax imposed by section 230* [¶1662] the term 'net income' means the gross income as defined in section 233 [¶1788] less the deductions allowed by section 234 [¶1922] and the net income shall be computed on the same basis as is provided in subdivision (b) of section 212 [¶755] or in section 226 ['Returns when accounting period is changed,' ¶1479]."

*[The tax imposed by section 230 is "upon the net income of every corporation" simply.]

2286 Law ¶281. **Gross Income of a Foreign Corporation Defined.**—"Sec. 233. (a) That in the case of a corporation subject to the tax imposed by section 230 [¶1662] the term 'gross income' means the gross income as defined in section 213 [¶763]."

2287 Law ¶284. **Gross Income of a Foreign Corporation is that from Sources within the United States only.**—"(b) In the case of a foreign corporation gross income includes only the gross income from sources within the United States."

2288 **Meaning of "Source within United States."**—It is not necessary that the foreign corporation shall be engaged in business in this country or that it have an office, branch, or agency in the United States. Liability to the tax attaches with respect to the income, the source of which is in the United States.

"Source" as here used means the place of the origin of the income. (Art. 66, ¶309-
2289 310, Reg. 33, Rev., Jan. 2, 1918.)

2290 **Foreign Corporations Doing Business by Agents.**—[Note that the wording of the present Act is "income from sources within the United States."] The Federal income tax law provides that the normal tax imposed by it shall be levied, assessed, and collected upon the entire net income arising and accruing to foreign corporations from business transacted or capital invested in this country. Such a corporation may transact business or have capital invested in this country through and by an agent as completely as if it were transacting the business or investing the capital direct from its home office or through a duly established branch office in the United States. An agent who is doing business in this country, buying and selling certain products of the foreign corporation, is to all intents and purposes a branch of the foreign corporation, as through and by him the foreign corporation is transacting business in this country.

The buying and selling of a product in this country through a local agency or branch
2291 for and on behalf of a foreign corporation is clearly transacting business in this country within the meaning of the Federal income tax law, and any net income arising and accruing because of the business to transacted will be held to be subject to the tax imposed by the Federal income tax law, and every foreign corporation carrying on business in the manner indicated will be required to make a return of annual net income covering the business so transacted. (T. D. 2137, Jan. 30, 1915.)

2292 When a foreign corporation sends a representative to this country to solicit business, the merchandise thus sold to be shipped direct to the consignee, it will be held that such corporation is transacting business in this country. The fact that the solicitor or representative has only a mailing address in this country is immaterial, he is none the less an agent of the foreign corporation. To the extent that he sells in this country goods or merchandise for the foreign corporation, to that extent the foreign corporation is transacting business in the United States, and the net income arising and accruing to the corporation by reason of the business so transacted will be subject to the income tax imposed by section 2, act of October 3, 1913.

Any foreign corporation transacting business in this country in the manner herein-
2293 before indicated will make a return of annual net income to the collector of the district in which its representative has his mailing address, showing in such return the net income accruing to it from the business so transacted. (T. D. 2161, Feb. 19, 1915.)

2294 **Taxable Income of Foreign Steamship Companies.**—This office is in receipt of your letter of the 17th instant, in which you quote what purports to be a ruling of this office with respect to the manner of computing the income, taxable under the federal income tax law (Section 2, Act of October 3, 1913), against foreign steamship companies doing business in and from this country, and you ask if the ruling quoted "represents

the stand of the Bureau of Internal Revenue on the subject in question." In reply you are informed that the ruling referred to is quoted from a letter written by this office and, in the main, represents the position of this Bureau in regard to the question raised. * * * The rule or position of this office with respect to the method of ascertaining the taxable income of foreign steamship companies, whose steamships touch at American ports and which carry therefrom freight and passengers for hire, could perhaps be better stated as follows: The returns made by such corporations, for the purpose of the income tax imposed by the act cited, should include as gross income the total receipts of all outgoing business, whether freight or passengers. With the gross income thus ascertained, the ratio existing between it and the gross income from all ports, both within and without the United States, should be determined as the basis upon which allowable deductions may be computed, the principle being that allowable deductions shall be computed upon a basis which recognizes that the income arising and accruing from business done in and from this country shall bear its share, and no more, of expense, incident to the earning or creation of such income, in the ratio that the gross income arising in and from this country bears to the entire gross income arising from business done both within and without this country. In other words, the net income of a foreign steamship company doing business in or from this country, for the purpose of the income tax assessable and payable to the United States, will be ascertained by deducting from the gross receipts from outgoing business such a portion of the aggregate expenses, losses, etc., as such receipts bear to the aggregate receipts from all ports. * * * [See ¶2305.] (Letter to The Corporation Trust Company, signed by Acting Commissioner David A. Gates, and dated July 18, 1916.)

2295 General expenses, such as coal, ship stores, etc., of foreign steamship companies, shall be prorated as provided in [¶2305 * * *]. (Art. 116, Reg. 33, Jan. 5, 1914.)

2296 Law ¶285. **"Gross Income" of a Foreign Corporation includes Interest on the Obligations of all Residents and Dividends on Stock of Resident Corporations.**—"including the interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, dividends from resident corporations, and" [See ¶2876.]

2297 Gross income from sources within the United States as applied to foreign corporations shall include interest received on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, as well as income derived from dividends on capital stock or from the net earnings of resident corporations, joint-stock companies, or associations, or insurance companies, subject to tax under this title, and likewise income from rentals and royalties, from business transacted or capital invested in the United States. (Art. 89, ¶350, Reg. 33, Rev., Jan. 2, 1918.)

2298 Law ¶286. **"Gross Income" of a Foreign Corporation includes Amounts Received as Profits on the Manufacture and Disposition of Goods within the United States.**—"including all amounts received (although paid under a contract for the sale of goods or otherwise) representing profits on the manufacture and disposition of goods within the United States." [Reg. 45 reads "manufacture *or* disposition", ¶2876.]

Comment.—[The above provision] is new. The following ruling is based on the old law.]

2299 **A Foreign Corporation Having no Office or Agent in the United States, Collecting Commissions only on Account of Sales of American Goods Abroad, is Not Liable to Tax on Amounts so Earned.**—Reference is made to your letter of the 12th instant, in which you state that a corporation located at Singapore, incorporated under the laws of that country, which has no office or agent in the United States, and is engaged in the commission business has, during the year 1917, sold in Singapore and nearby countries certain products of manufacturing establishments in the United States. The purchase price of these goods is transmitted by the purchasers to the manufacturers and American houses direct. When the money is received in the United States a commission is paid out of the proceeds of sale to this foreign corporation. ¶Relative to your inquiries, you are advised that under the above statement of facts the commission earned by the Singapore corporation is not considered to be income derived from sources within the United States, and the Singapore corporation is not required to report such commissions as income under the provisions of the Act of September 8, 1916, and Titles I and II of the Act of October 3, 1917. ¶In regard to your second inquiry, you state that a corporation in this country receives from the manufacturer these commissions and transmits the same to the Singapore corporation, and ask to be advised whether this corporation which so receives and trans-

mits these commissions is under obligations to report such commissions in its return of annual net income. ¶In reply, you are informed that if the American corporation in question simply acts as the agent for the Singapore corporation in receiving and transmitting such commissions, and does not retain for its own use any part thereof, it is held that such commissions need not be reported as income by the domestic corporation referred to. (Letter to Brower, Brower and Brower, Brooklyn, New York, signed by Deputy Commissioner L. F. Speer, and dated April 20, 1918.)

2300 Law ¶287. **Deductions Allowed Foreign Corporations.**—"Sec. 234. (a) That in computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:"

2301 **Comment.**—[The deductions which may be allowed to foreign corporations are in character the same as those allowed to domestic corporations. These shall be allowed only to the extent indicated below in paragraphs 2302, 2303, and 2304.]

2302 Law ¶293. **Interest Allowed as a Deduction to Foreign Corporations.**—[Same as for domestic corporations, ¶2027, qualified as follows—] "or, in the case of a foreign corporation, the proportion of such interest which the amount of its gross income from sources within the United States bears to the amount of its gross income from all sources within and without the United States;"

2303 Law ¶300. **Taxes Allowed as a Deduction to Foreign Corporations.**—[Same as for domestic corporations, ¶2036, qualified as follows—] "(e) in the case of a foreign corporation, by the authority of any foreign country (except income, war-profits and excess-profits taxes, and taxes assessed against local benefits of a kind tending to increase the value of the property assessed), upon the property or business:"

2304 Law ¶324. **The Apportionment and Allocation of Deductions Allowed Foreign Corporations other than Interest and Taxes.**—"(b) In the case of a foreign corporation the deductions allowed in subdivision (a) [¶1788], except those allowed in paragraph (2) [¶2027] and in clauses (a) [¶2037], (b) [¶2039], and (c) [¶2040] of paragraph (3), shall be allowed only if and to the extent that they are connected with income arising from a source within the United States;"

2305 Law ¶325. "and the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary."

2306 For the purpose of the tax the net income of foreign corporations shall be ascertained by deducting from the gross amount of income received in this country the deductions enumerated in the act, which deductions shall be limited to expenditures or charges actually incurred in the maintenance and operation of the business transacted and capital invested in the United States or, as to certain charges, such proportion of the aggregate charges as the gross income from business done and capital invested in the United States bears to the aggregate income within and without the United States; that is to say, the deductions from gross income of a foreign corporation doing business in this country or receiving income from sources within the United States, must, as nearly as possible, represent the actual expense and authorized charges incident to the business done and capital invested in this country and must not comprehend, either directly or indirectly, any expenditures or charges incurred in the transaction of business or the investment of capital without the United States. (Art. 197, ¶590, Reg. 33, Rev., Jan. 2, 1918.)

2307 **Deductions Permitted to Foreign Corporations Deriving Their Taxable Income Solely from Stock or Bonds of Domestic Corporations.**—[Under the present law the dividends themselves would constitute an allowable deduction. The tax on the bond interest should be withheld at the source [¶572] unless the corporation had an "office" within the United States. Under the present law gross income of a foreign corporation includes "only the gross income from sources within the United States."] This office is in receipt of your letter of the 20th ultimo, in which you refer to office letter of April 8 [10], 1916, in which it was held that a non-resident corporation, holding stock of a domestic corporation, will be chargeable with such income tax as may be assessable upon the dividends on said stock and will be subject to all provisions of the law and the regulations for making return and paying tax. You also point out the fact that the income tax law provides, in paragraph 2 [G], that the normal tax shall be imposed upon

the net income accruing to a foreign corporation from business transacted and capital invested within the United States during the year and prescribes the deductions to which such foreign corporations are entitled.

You therefore ask:

2308 "if the foreign corporation is not engaged in business, but derives its income from the United States solely in the form of dividends or interest, to what extent is it entitled to take advantage of the deductions prescribed by law."

In reply you are informed that, if a foreign corporation is liable under the present 2309 income tax law to the tax imposed by it, it is liable for the reason that such corporation is either transacting business or has capital invested in the United States. The liability of a foreign corporation to income tax on the income received by it from stocks and bonds of domestic corporations exists because of the fact that such corporation has capital invested in the securities the income from which has its source in the United States. In other words, a foreign corporation which derives its income from the United States solely in the form of dividends or interest has capital invested in the United States, and, under the ruling hereinbefore referred to, the liability of the corporation to tax attaches by reason of the source of the income being in the United States, the domicile of the securities as well as of the corporation owning them being immaterial.

It therefore follows that, as the income arising and accruing to a foreign corporation 2310 from capital invested in stocks and bonds of domestic corporations is subject to the tax imposed by Section 2, Act of October 3, 1913, it will be permissible for such a foreign corporation, although its income from the United Satest is derived "solely in the form of dividends and interest" on domestic stocks and bonds, to deduct from the gross income so received any or all of the items scheduled in the law as proper deductions in the case of a foreign corporation, regardless of the source of the income, provided the amounts so deducted will not exceed the limit defined in the schedule of allowable deductions. In other words, the fact that the income arising or accruing in the United States to a foreign corporation is "derived solely from dividends or interest" on domestic stocks and bonds will not operate to deprive such foreign corporation from deducting from the gross income from this source such items of disbursement, loss, etc., as would be properly deductible were the income derived from any other source.

It is contemplated by this ruling, however, that, in as far as practicable, the deduc- 2311 tions shall comprehend only such expenditures, losses, etc., as are incurred in, or are incidental to, the creation of the income against which they are charged, and in all cases the deductible amounts must be within the limit fixed by the law. (Letter to The Corporation Trust Company, signed by Commissioner W. H. Osborn, and dated June 6, 1916.)

2312 **Returns by Foreign Corporations.**—Every foreign corporation having income from sources within the United States must make returns of annual net income in accordance with the rule set out in section 12 (b) of the act of September 8, 1916, as amended by the act of October 3, 1917. (Art. 66, ¶311, Reg. 33, Rev., Jan. 2, 1918.)

2313 Law ¶359. "(b) Returns shall be made to the collector of the district in which is located the principal place of business or principal office or agency of the corporation,"

2314 Law ¶345. "If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return shall be made by the agent."

2315 Law ¶360. "or, if it has no principal place of business or principal office or agency in the United States, then to the collector at Baltimore, Maryland."

2316 **Obligation of a Foreign Corporation to Make Return.**—If a foreign corporation having no office, agent, or place of business in the United States receives income from sources within this country, other than that upon which the tax has been withheld at the source, it shall make a return of annual net income to the collector of internal revenue at Baltimore, Md., accounting for therein all the income received during the year from all sources in the United States, including that upon which the tax has been withheld, taking credit for the amount of the tax so withheld at the source under the conditions hereinbefore set out.

Nothing in the foregoing provisions shall be construed to relieve a foreign corpora- 2317 tion having income from sources within the United States from making a return of annual net income. (Art. 202, ¶604–605, Reg. 33, Rev., Jan. 2, 1918.)

2318 **Foreign Corporations Having Several Branch Offices in the United States.**—A foreign corporation having several branch offices in the United States should designate one of such branches as its principal office and should also designate the proper officers to make the required return. (Art. 83, Reg. 33, Jan. 5, 1914.)

2319 **Form to be Used by Foreign Corporations in Making Annual Returns.**—Receipt of your letter of the 5th instant is acknowledged, and your suggestion that a new form of return in lieu of 1031 for the use of nonresident alien corporations should be prepared, is noted, and will have careful consideration when the revision of forms is taken up.

2320 You are informed, however, that in several instances, nonresident alien corporations using Form 1031 have been advised that on blank line No. 10 of the return proper, they should take credit for any tax that had been withheld at the source and paid to the proper United States officer, on income received by them from sources within this country. ¶Replying to your further inquiries you are informed: ¶That it will be sufficient for foreign corporations against whom income tax is withheld at the source to give the name of the withholding agent and the amount so withheld. ¶In the case of bonds which contain the so-called "tax-free" covenant, the bondholders have the right to assume that the fiscal agent of the corporation has withheld and paid over to the proper officers of the United States Government the tax due on the bond interest due the bondholders, though this assumption will not relieve the bondholder from the tax should it develop that the debtor corporation did not so withhold it or pay it over to the proper United States officer. ¶Clearly, when the tax has been withheld and remitted to the Government and the bondholder is advised of that fact, such bondholder may take credit in his or its return against the full amount of tax due as shown by the return, for the amount so withheld and paid over to the United States officer. In other words, when withholding agents have paid the tax on account of nonresident alien corporations having income from interest and * * * from sources within the United States, they, are entitled to the benefit of a credit for such payments as against the tax due and assessable on the basis of the income which they received from all sources within the United States.

2321 As to the case you cite in which a nonresident alien corporation, through you as its American agent, had over-paid its tax by reason of its not having been able to take credit for the amount of tax withheld at the source, you are informed that a claim for refund [¶2514] of the amount overpaid may be filed with the Collector to whom such amount was paid. With the claim a statement setting out all the facts should be filed and the matter will have proper consideration and as prompt attention as possible. (Letter to Lee, Higginson & Co., Boston, Mass., signed by Commissioner Daniel C. Roper, and dated November 10, 1917.)

Consolidated Returns.—[Read at ¶1405.]

General Law Provisions and Applicable Regulations Relative to Returns by Corporations.—[Read at ¶1398.]

2322 **Credit for Amount of Tax Withheld at the Source.**—[Sec. 237, ¶572, provides that a 10 per cent or a 2 per cent tax is to be withheld at the source in the case of foreign corporations not engaged in trade or business within the United States and not having any office or place of business therein, in the same manner as is provided in Sec. 221, ¶553 and "subject to the same conditions as provided in that section." One condition provided for in Sec. 221 at ¶731, is that any amount of tax withheld is to be credited against the income tax shown in the taxpayer's return, the income on which the tax has been withheld being included in such return.]

2323 In making its return a foreign corporation may take credit against the tax assessable on the basis of the net income so returned for any tax which may have been withheld at the source, provided the income upon which the tax was withheld is included in the return and provided that the name of the withholding agent is given in the return. (Art. 198, ¶591, Reg. 33, Rev., Jan. 2, 1918.)

2324 If for any reason there is included in the return which a foreign corporation is required to make of all income received from sources within the United States any income upon which tax has been withheld at the source, such foreign corporation may take credit against the amount of tax due for the amount of the tax so withheld at the source; provided a statement is attached to the return setting forth the source and amount of the income upon which the tax was so withheld. (Art. 201, ¶602, Reg. 33, Rev., Jan. 2, 1918.)

Payment of Tax, if Any, Not Withheld at the Source. [Read at ¶2339.]

2325 Law ¶327. **Credits Allowed to Corporations.**—"Sec. 236. That for the purpose only of the tax imposed by section 230 [¶1662] there shall be allowed the following credits:"

2326 Law ¶328. **Any Interest from Government Obligations and from War Finance Corporation Bonds is to be Credited for Purposes of the Income Tax.**—"(a) The amount received as interest upon obligations of the United States and bonds issued by the War Finance Corporation, which is included in gross income under Section 233 [¶1788];

2327 Law ¶329. **The Amount of War and Excess-Profits Tax Imposed for the Same Taxable Year is to be Credited Against Income for Purposes of the Income Tax.**—"(b) The amount of any taxes imposed by Title III for the same taxable year;"

2328 Law ¶330. **War and Excess-Profits Tax Credit in the Case of Fiscal Year Corporations.**—"*Provided*, That in the case of a corporation which makes return for a fiscal year beginning in 1917 and ending in 1918, in computing the tax as provided in subdivision (a) of section 205 [¶1666], the tax computed for the entire period under Title II of the Revenue Act of 1917 shall be credited against the net income computed for the entire period under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 and under Title I of the Revenue Act of 1917, and the tax computed for the entire period under Title III of this Act at the rates prescribed for the calendar year 1918 shall be credited against the net income computed for the entire period under this title; and"

When the net income has been ascertained in accordance with the rule set out **2329** in Section 12 (a) of the Act of September 8, 1916, as amended by the Act of October 3, 1917, the net income so ascertained shall be credited with the amount of excess-profits tax assessed or to be assessed for the same year. (Art. 199, ¶594, Reg. 33, Rev., Jan. 2, 1918.)

2330 Law ¶331. **Domestic Corporations are Allowed a Specific Credit of $2,000.**—(c) In the case of a domestic corporation, $2,000."

2331 Law ¶4. **"Domestic Corporation" Defined.**—"The term "domestic" when applied to a corporation or partnership means created or organized in the United States [¶2281];"

Credit of $2,000 Apportioned When Returns are Being Made for a Changed Accounting Period.—[Read at ¶1485.]

2332 Law ¶337. **Credit to a Domestic Corporation Against Federal Income and War and Excess-Profits Taxes for Certain Income and Excess-Profits Taxes Paid to Foreign Countries and for all Such Taxes Paid to United States Possessions During the Taxable Year.**—"Sec. 238 (a). That in the case of a domestic corporation the total taxes imposed for the taxable year by this title and by Title III [war and excess-profits tax] shall be credited with the amount of any income, war-profits and excess-profits taxes paid during the taxable year"

2333 Law ¶338. "to any foreign country, upon income derived from sources therein,"

2334 Law ¶339. "or to any possession of the United States."

2335 Law ¶340. "If accrued taxes when paid differ from the amounts claimed as credits by the corporation, or if any tax paid is refunded in whole or in part, the corporation shall at once notify the Commissioner who shall redetermine the amount of the taxes due under this title and under Title III for the year or years affected, and the amount of taxes due upon such redetermination, if any, shall be paid by the corporation upon notice and demand by the collector, or the amount of taxes overpaid, if any, shall be credited or refunded to the corporation in accordance with the provisions of section 252 [¶2488]. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the corporation to give a bond with sureties satisfactory to and to be approved by him in such penal sum as he may require, conditioned for the payment by the taxpayer of any amount of taxes found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require."

[For United States bonds as security see ¶2220.]

2336 Law ¶341. "(b) This credit shall be allowed only if the taxpayer furnishes evidence satisfactory to the Commissioner showing the amount of income derived from sources within such foreign country or such possession of the United States, as the case may be, and all other information necessary for the computation of such credit."

2337 Law ¶342. **Credit to a Domestic Corporation Making Return for Fiscal (Not Calendar) Year Ending in 1918.**—"(c) If a domestic corporation makes a return for a fiscal year beginning in 1917 and ending in 1918, only that proportion of this credit shall be allowed which the part of such period within the calendar year 1918 bears to the entire period."

2338 **Any Tax Actually Paid by Creditor on Tax-Free-Covenant Bond Interest may be Credited by Domestic Corporation Creditor if Interest is Being Returned as Income (as it should be).**—If a corporation shall have returned as income interest received on bonds, the interest upon which the debtor corporation had agreed to pay without deduction of income taxes, and if the debtor corporation shall have actually paid the income tax assessable on such interest income, it will be permissible for the corporation receiving such interest to take credit against the tax assessable on the basis of its net income returned, for the amount of tax paid thereon by the debtor corporation. (Art. 199, ¶593, Reg. 33, Rev., Jan. 2, 1918.)

PART IV. ADMINISTRATIVE PROVISIONS.

PAYMENT OF THE TAX.

[For "Payment of Taxes" in Reg. No. 45, see at ¶3031.]

2339 Law ¶361. **The Tax is to be Paid in Four Equal Installments Except When Withheld at the Source.**—"Sec. 250. (a) That except as otherwise provided in this section and sections 221 and 237 [¶553 and ¶572, taxes collected at the source] the tax shall be paid in four installments, each consisting of one-fourth of the total amount of the tax."

2340 Law. ¶362. "The first installment shall be paid at the time fixed by law for filing the return and"

2341 Law ¶363. "the second installment shall be paid on the fifteenth day of the third month,"

2342 Law ¶364. "the third installment on the fifteenth day of the sixth month, and"

2343 Law ¶365. "the fourth installment on the fifteenth day of the ninth month,"

2344 Law ¶366. "after the time fixed by law for filing the return."

2345 Law ¶367. **When First Installment is Due When Time For Filing Return Has Been Extended.**—"Where an extension of time for filing a return is granted the time for payment of the first installment shall be postponed until the date of the expiration of the period of the extension, but the time for payment of the other installments shall not be postponed unless the Commissioner so provides in granting the extension."

2346 Law ¶368. **Interest Runs on Amount of Installment During Period of Extension Availed of.**—"In any case in which the time for the payment of any installment is at the request of the taxpayer thus postponed, there shall be added as part of such installment interest thereon at the rate of ½ of 1 per centum per month from the time it would have been due if no extension had been granted, until paid."

2347 Law ¶369. **If Any Installment is Not Paid When Due the Entire Unpaid Tax Becomes Due.**—"If any installment is not paid when due, the whole amount of the tax unpaid shall become due and payable upon notice and demand by the collector [¶2399]."

2348 Law ¶370. **The Entire Tax May Be Paid On or Before the Due Date of the Return.**—"The tax may at the option of the taxpayer be paid in a single payment instead of in installments, in which case the total amount shall be paid on or before the time fixed by law for filing the return, or, where an extension of time for filing the return has been granted, on or before the expiration of the period of such extension."

2349 Law ¶371. **Recomputation of Installments After an Examination of the Return by the Commissioner.**—"(b) As soon as practicable after the return is filed, the Commissioner shall examine [it]. If it then appears that the correct amount of the tax is greater or less than that shown in the return, the installments shall be recomputed."

2350 For the purpose of verifying the accuracy of a return, or for making one where none is made, the books of corporations and all other relative data shall be open to the inspection of the Commissioner of Internal Revenue or his duly authorized agents. (Art. 221, ¶639, Reg. 33, Rev., Jan. 2, 1918.)

2351 For the purpose of verifying any return, made pursuant to this act, the Commissioner of Internal Revenue may, by any duly authorized revenue agent or deputy collector, cause the books of such corporation to be examined, and if such examination discloses that the corporation is liable to tax in addition to that previously assessed, or assessable, the same shall be assessed and shall be payable immediately upon notice and demand. For the purpose of such examination, the books of corporations shall be open to the examining officer, or shall be produced for this purpose upon summons issued by any properly authorized officer. (Art. 186, Reg. 33, Jan. 5, 1914.)

2352 Law ¶372. **Crediting or refund of excess payment.**—"If the amount already paid exceeds that which should have been paid on the basis of the installments as recomputed, the excess so paid shall be credited against the subsequent installments; and if the amount already paid exceeds the correct amount of the tax, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of section 252 [¶2488]".

2353 An excess payment of tax in one year can not be offset against an assessment of tax for a subsequent year. (Art. 39, ¶247, Reg. 33, Rev., Jan. 2, 1918.)

2354 Law ¶373. **Payment of Amounts Due Because of Underpayments Originally.**—"If the amount already paid is less than that which should have been paid, the difference shall, to the extent not covered by any credits then due to the taxpayer under section 252 [¶2488], be paid upon notice and demand by the collector."

2355 In cases wherein additional assessments are made as a result of an examination or audit of the return, the taxpayer shall, immediately following the making of the assessment, be notified of the amount thereof, and such taxes shall be paid within 10 days from the date of such notice. (Art. 230, ¶655, Reg. 33, Rev., Jan. 2, 1918.)

2356 Law ¶374. **No Penalty for Understatement if Return be Made in Good Faith and if the Understatement is Due to No Fault of the Taxpayer.**—"In such case if the return is made in good faith and the understatement of the amount in the return is not due to any fault of the taxpayer, there shall be no penalty because of such understatement."

2357 Law ¶375. **Penalty if Understatement is Due to Negligence, Merely.**—"If the understatement is due to negligence on the part of the taxpayer, but without intent to defraud, there shall be added as part of the tax 5 per centum of the total amount of the deficiency, plus interest at the rate of 1 per centum per month on the amount of the deficiency of each installment from the time the installment was due."

2358 Law ¶376. **Penalty if Understatement is False or Fraudulent with Intent to Evade the Tax.**—"If the understatement is false or fraudulent with intent to evade the tax, then, in lieu of the penalty provided by section 3176 of the Revised Statutes, as amended, for false or fraudulent returns willfully made [50% of the amount of the tax, ¶1556], but in addition to other penalties provided by law for false or fraudulent returns, there shall be added as part of the tax 50 per centum of the amount of the deficiency."

2359 Law ¶377. **Payment of the Tax in Installments Does Not Apply to Tax Due on Returns Made by the Collector or by the Commissioner.**—"(c) If the return is made pursuant to section 3176 [¶1549] of the Revised Statutes as amended, the amount of tax determined to be due under such return shall be paid upon notice and demand by the collector."

2360 Law ¶378. **Five-Year Limitation on the Assessment of Taxes and on the Collection of Taxes by Suit Except in the Case of False or Fraudulent Return With Intent to Evade the Tax.**—"(d) Except in the case of false or fraudulent returns with intent to evade the tax, the amount of tax due under any return shall be determined and assessed by the Commissioner within five years after the return was due or was made, and no suit or proceeding for the collection of any tax shall be begun after the expiration of five years after the date when the return was due or was made. In the case of such false or fraudulent returns, the amount of tax due may be determined at any time after the return is filed, and the tax may be collected at any time after it becomes due."

2361 Law ¶461. **Continuing Effect of Prior Laws for the Assessment and Collection of Taxes, and the Imposition and Collection of Penalties, that have Accrued Thereunder.**—"Sec. 1400. (a) That the following parts of Acts are hereby repealed, subject to the limitations provided in sub-division (b):

(1) The following titles of the Revenue Act of 1916:

Title I (called "Income Tax").

* * * * * * * * * * *

(2) The following parts of the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917:

* * *;

Section 402 (called "Returns of Dividends").

(3) The following titles of the Revenue Act of 1917:

Title I (called "War Income Tax").

* * * * * * * * * * *

Title X (called "Administrative Provisions").

Title XII (called "Income-Tax Amendments").

2362 Law ¶462. "(b) Such parts of Acts shall remain in force for the assessment and collection of all taxes which have accrued thereunder, and for the imposition and collection of all penalties or forfeitures which have accrued and may accrue in relation to any such taxes, and except that the unexpended balance of any appropriation heretofore made and now available for the administration of any such part of an Act shall be available for the administration of this Act or the corresponding provision thereof: *Provided*, That, except as otherwise provided in this Act, no taxes shall be collected under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917, or Title I or II of the Revenue Act of 1917, in respect to any period after December 31, 1917:

* * * * * * * * * * * *

2363 Law ¶463. "In the case of any tax imposed by any part of an Act herein repealed, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act."

2364 **The "Three-Year Limitation on Assessments" and the "No Limitation on Collection of the Tax by Suit" Provisions of Prior Laws.**—[Sec. 9 (a) of Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 providing for the assessment of income taxes on individuals reads, in part, as follows:

"except in cases of refusal or neglect to make such return and in cases of erroneous, false, or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this title or by existing law, or require the necessary corrections to be made, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment:"

2365 [Sec. 14 (a) of Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 providing for the assessment of income taxes on corporations reads, in part, as follows:

"except in cases of refusal or neglect to make such return, and in cases of erroneous, false, or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this title or by existing law; and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance company immediately upon notification of the amount of such assessment;"]

2366 **Procedure in Cases of Delinquency.**—In cases of refusal or neglect to make return and in cases of erroneous, false, or fraudulent returns the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due or has been made make a return of income upon information obtained as provided for by law, or require the necessary corrections to be made, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment. If the amount of such assessment remains unpaid for 10 days after notice and demand therefor by the collector, there shall be added the sum of 5 per cent on the amount of tax unpaid and interest at the rate of 1 per cent per month upon such tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons. (Art. 42, ¶253, Reg. 33, Rev., Jan. 2, 1918.)

2367 In cases wherein corporations have neglected or refused to make returns, and in cases wherein returns are found, upon investigation or otherwise, to be false or fraudulent, the commissioner may, upon discovery thereof, at any time within three years after such return is due, make a return upon the information obtained in the manner provided in the act, and the tax so discovered to be due, together with the additional tax prescribed, shall be assessed, and the amount thereof shall be paid immediately upon notice and demand. (Art. 221, ¶638, Reg. 33, Rev., Jan. 2, 1918.)

2368 The statute (Sec. 9 (a), act Sept. 8, 1916) does not require the assessment to be made within three years from the time a return was due. The limitation is upon the discovery of delinquency or error, within three years.

2369 Where a further tax is found to be due as result of audit of a return or agent's report, an amended return or waiver will not be required, except where the discovery of the tax is made subsequent to the expiration of the three-year period of limitation. (Art. 38, ¶243–244, Reg. 33, Rev., Jan. 2, 1918.)

2370 Section 14 authorizes the Commissioner of Internal Revenue in cases of refusal or neglect to make returns, or in cases of erroneous, false or fraudulent returns, upon discovery thereof at any time within three years after said returns are due, to make returns upon information obtained and assess the tax thus found to be due against such corporations and collect it in the ordinary statutory method; and section 38, act of August 5, 1909, and section 2, act of October 3, 1913, contain similar provisions. Under this provision, it appears that the commissioner is without authority to make a formal assessment of special excise or income tax unless the liability therefor has been discovered within three years from the date when the return is due. This limitation does not, however, limit the right of the Government to claim and collect, by suit or otherwise, any additional tax found due for a period antedating the three-year limitation. (Art. 233, ¶658, Reg. 33, Rev., Jan. 2, 1918.

2371 **No Three-Year Limitation to Right of Government to Collect Taxes by Suit.**—In numerous cases the courts have held that there is no limitation upon the right of the Government to sue for and recover unpaid taxes. It is not essential that assessment be made; or, if made, that it be made within a specified time. If liability to original or additional tax exists or has been discovered, the amount thereof may be recovered by suit, regardless of the fact that no assessment of the amount has been made, and regardless of the date of its discovery or the period for which the tax is due. (Art. 233, ¶659, Reg. 33, Rev., Jan. 2, 1918.)

2372 The appended decision [Corporation Tax Act of August 5, 1909] of the United States District Court for the Western District of Michigan, in the case of the United States, plaintiff, v. Grand Rapids and Indiana Railway Company, defendant, is published for the information of internal-revenue officers and others concerned. (T. D. 2166, March 4, 1915.) [239 Fed. 153.]

1. THE THREE YEARS' LIMITATION.

The three-years' limitation in section 38, act of August 5, 1909, fifth subdivision, is not a limitation upon the right of the Government to sue for unpaid taxes, but at most is a limitation upon tne right of the collecting officers to make assessment and to enforce payment by the customary statutory proceedings.

2. SUIT FOR TAXES.

A suit for taxes will lie without an assessment.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

The United States, plaintiff, v. Grand Rapids & Indiana Railway Co., defendant.

DEMURRER.

2373 A careful study and analysis of the statute here involved and an examination and consideration of the applicable and controlling authorities lead to the following conclusions:

(1) The three-year clause of the fifth subdivision of section 38 of the 1909 excise
2374 law is not a limitation upon the right of the Government to sue for unpaid taxes, but, at most, is a limitation upon the right of the collecting officers to make assessment and to enforce payment by the summary statutory proceedings.

(2) In the collection of the taxes imposed by the statute the Government is not
2375 confined to the summary proceedings therein provided, but may resort to a plenary suit; and

(3) Where a tax of a fixed percentage (like the one here sought to be recovered)
2376 is imposed by the statute on a subject or object which is so definitely described in the statute that its amount or value on which the fixed per centum is to be calculated can be ascertained and determined, on evidence, by a court, a suit for the tax will lie without an assessment. United States v. Tilden (28 Fed. Cas., 161; No. 16519); United States v. Hazard (26 Fed. Cas., 251; No. 15337); Dollar Savings Bank v. United States (19 Wall., 227); United States v. Chamberlain (219 U. S., 250-264); King v. United States (99 U. S. 229); United States v. Reading R. R. (123 U. S., 113); United States v. Cobb (11 Fed., 76); United States v. M. H. and O. R. Co. [W. D. Mich.], (17 Fed., 719; 22 Cyc., 1670, and cases there cited); Eliot National Bank v. Gill (210 Fed., 923, affirmed by the Circuit Court of Appeals of First Circuit, December 21, 1914, [218 Fed. 600].).

The demurrer will be overruled and the defendant will be given fifteen days within
2377 which to plead to the declaration.

C. W. SESSIONS, *District Judge.*

February 25, 1915. (T. D. 2166, March 4, 1915.)

[Comment: After the demurrer was overruled the case went on trial, resulting
2378 in judgment in favor of the United States.]

2379 The appended decision [captions only as shown below] of the United States Circuit Court of Appeals for the Sixth Circuit, in the case of the United States v. Nashville, Chattanooga & St. Louis Railway, is published for the information of internal-revenue officers and others concerned. (T. D. 2697, April 16, 1918.)

2380 1. False or Incorrect Returns.—The word "false," as used in the fifth subdivision of section 38, of the act of August 5, 1909, providing that in case of any return made with false or fraudulent intent the Commissioner of Internal Revenue shall add 100 per centum of the tax, means "untrue" or "incorrect," and does not necessarily mean intentionally or fraudulently false.

2. Common-Law Action of Debt for Taxes.—A common-law action of debt lies
2381 in favor of the Government whenever by accident, mistake, or fraud, taxes have not been paid; thus the Government may recover a personal judgment for a tax whenever there exists a duty to pay, provided another remedy has not been made exclusive by clear and specific declaration.

3. Reassessment as Prerequisite to Suit.—Act of August 5, 1909, section 38, does
2382 not make the remedy by way of a reassessment by the Commissioner of Internal Revenue exclusive of all other remedies for collection of excise tax imposed on corporations, and suit may be brought under Revised Statutes, section 3213, providing that taxes may be sued for and recovered in the name of the United States, in any proper form of action, before any circuit or district court of the United States for the district within which liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the action, without any such reassessment.

4. Operating Expenses and Depreciation.—Though what is a necessary expense
2383 of operation and what is a reasonable allowance for property depreciation are ultimately questions of fact, so far as they involve legal questions they are absolutely judicial questions, and the declaration in a suit to recover excise tax imposed on corporations by the act of August 5, 1909, which fails to show the making of a new assessment by the Commissioner of Internal Revenue, is therefore not demurrable.

5. Declaration in Suit to Recover Tax—Evidence.—Evidence sustaining allegations
2384 of incorrectness in returns by corporation subject to excise tax imposed by act of August 5, 1909, need not be set out in the declaration in a suit to recover such tax; declaration here sufficiently averred erroneous or untrue return of operating expenses and deductions for depreciation.

6. Declaration in Suit to Recover Tax—Bill of Particulars.—Where declaration
2385 in action to recover of a corporation the excise tax imposed by act of August 5, 1909, expressly avers that alleged deductions were not reasonable allowances for depreciation within the meaning of such act, if more definite or detailed information is needed to enable defendant to plead or prepare for trial, remedy is by bill of particulars.

7. Judgment Reversed.—Judgment of the district court is reversed. (249 Fed. 678.)
2386 (T. D. 2697, April 16, 1918.)

2387 In a case [¶2372] recently decided in the United States District Court for the Western District of Michigan, the court held that the three-year clause of the special excise corporation-tax law is not a limitation upon the right of the Government to sue for unpaid taxes, but, at most, is a limitation of the right of the collecting officers to make assessments and to enforce payment by the ordinary summary statutory proceedings. It was also held that, in a case wherein the tax was measured by a fixed percentage, as is the case in the special excise and income taxes, and the amount of the tax is capable of definite ascertainment, a suit for tax will lie without assessment.

2388 It follows, therefore, that when an additional tax is found to be for a period antedating the three-year limit, an assessment is not a necessary condition precedent to the collection of the tax, as the amount of the tax may be collected by suit.

2389 In the examination of books of corporations for the purpose of verifying their returns of annual net income for years antedating the three-year limit, examining officers have discovered additional tax liability in many cases and have encountered some difficulty in securing either amended returns or waivers in order that assessments of this additional tax may be formally made. (Mimeograph letter No. 1192 to Collectors, March 24, 1915; continued at ¶2391.)

2390 **The Three-Year Statutory Limitation May be Waived.**—While the Government is fully authorized to recover such taxes by suit, it is desirable, in order to obviate needless expense and annoyance to the taxpayer and the Government, that the collection be made as a result of a formal assessment. In order that this may be done, corporations owing additional taxes for any period antedating the three-year limitation should file amended returns, together with a statement formally waiving the three-year statutory limitation and consenting to assessment. In executing such amended returns or waivers, the corporations forfeit none of their rights under the law, and no penalty is incurred which might not be otherwise enforced by suit. (Art. 233, ¶660, Reg. 33, Rev., Jan. 2, 1918.)

2391 While the Government is fully authorized, as hereinbefore indicated, to recover such taxes by suit, this office prefers that the collection should be made in the ordinary statutory method, that is, as a result of a formal assessment. In order that this may be done, corporations should be requested to make amended returns, or to execute waivers in such form as will waive the three-year statutory limitation as to the time within which assessments may be made, and the corporations should be informed that, in executing this waiver, they forfeit none of their rights under the law or assume liability to no penalty that might not be enforced against them in the absence of such waiver. The corporations should also be given to understand that the execution of the waiver is, in fact, to their advantage, in that it has the effect to eliminate the necessity, on the part of the Government, to recover taxes by suit. If, however, the corporations against which additional tax liability is discovered will formally accept the findings of the examining officer and agree to voluntarily pay to the Collector of Internal Revenue the amount of tax found due, amended returns or waivers need not be required.

2392 In cases wherein waivers are executed, they should be substantially in the following form:

> ....., a corporation organized under the laws of the State of ....., hereby consents to an assessment of any and all taxes imposed by section 38 of the Act of Congress approved August 5, 1909, and shown or found to be due on a basis of its net income received from all sources during the year ....., and any and all penalties attached to or on account of said taxes, and said corporation hereby waives any statutory limitation as to the time in which such taxes and penalties should have been assessed.
>
> (Signed).....
> (Corporation.)
>
> (Corporate Seal.)

2293 It is believed that if corporations against which additional tax has been discovered for years antedating the three-year limit are fully advised that the making of amended returns or the execution of waivers does not in any way imperil any right which they have under the law or involve them in any additional penalties, no difficulty will be had in securing such amended returns or waivers.

2394 Examining officers should in all cases clearly present this matter to the corporations and, if possible, secure either amended returns or waivers, in order that formal assessments may be made and suit to recover tax, with the expense incident thereto, may be avoided. (Mimeograph letter No. 1192, to Collectors, March 24, 1915.)

2395 **When Waiver is Given the Ad Valorem Penalty Does not Accrue.**—Where the limitation of the statute as to assessment has run and a written waiver of exemption from assessment is given by the taxpayer, the ad valorem penalties of 50 per cent, addition to tax, is not to be assessed for delinquency in filing return. (Art. 52, ¶286, Reg. 33, Rev., Jan. 2, 1918.)

2396 **Past Due Taxes Voluntarily Paid.**—If the corporation against which additional tax liability is discovered will formally accept the findings of the examining officer and agree to voluntarily pay the additional tax to the Collector of Internal Revenue and does so pay the additional tax, amended returns or waivers will not be required. (Art. 234, ¶661, Reg. 33, Rev., Jan. 2, 1918.)

2397 Law ¶379. **Ad Valorem Penalty, Plus Interest, for Delay in Payment of Tax.**—"(e) If any tax remains unpaid after the date when it is due, and for ten days after notice and demand by the collector, then, except in the case of estates of insane, deceased, or insolvent persons [¶2413], there shall be added as part of the tax the sum of 5 per centum on the amount due but unpaid, plus interest at the rate of 1 per centum per month upon such amount from the time it became due:"

2398 Law ¶380. **Interest Rate Lower as to any Amount Subject to a Bona Fide Claim for Abatement.**—"*Provided*, That as to any such amount which is the subject of a bona fide claim for abatement [¶2499], such sum of 5 per centum shall not be added and the interest from the time the amount was due until the claim is decided shall be at the rate of ½ of 1 per centum per month."

2399 **Form 17.**—Collectors should issue Form 17 for the purpose of fixing definitely the date when the 5 per cent penalty accrues and interest at 1 per cent per month begins to run, and a copy of this notice should be filed as provided by act of August 17, 1912, amending section 3186, Revised Statutes. (Art. 41, ¶252, Reg. 33, Rev., Jan. 2, 1918.)

2400 [If any installment is not paid when due] notice and demand (Form 17) should be at once issued, and unless the tax [all of the tax unpaid] in such case is paid within 10 days after the service of such notice, general demand for tax, penalty, and interest (Form 21) should at once be issued. Immediate notice and demand (Form 17) will, however, be served in case of failure to file the required return within the statutory period. (Art. 197, Reg. 33, Jan. 5, 1914.)

2401 It appears that certain collectors hold that notice of assessment and demand, Form 17, is not necessary to create a liability to 5 per cent. penalty and interest at 1 per cent. per month in the case of income tax remaining unpaid after [* * * the] due date. This view as to the requirements of the law is clearly wrong and contrary to the instructions (Art. 197, Reg. 33) issued on the subject.

The necessity of issuing Form 17 is twofold—first, to determine the date when
2402 5 per cent. penalty accrues and interest at 1 per cent per month begins to run, and, second, to complete the Government's lien on property belonging to the taxpayer.

* * * * * * * * * * * *

2403 In case of non-payment, * * * a formal notice and demand which the law clearly contemplates and which the courts hold to be necessary before the delinquent taxpayer becomes chargeable with penalty and interest [is to be issued].

In all cases, therefore, where an assessed tax remains unpaid after it becomes due
2404 a notice on Form 17 should be at once issued, to be followed, when necessary, by Form 21 and 69, in their order. The fact that a claim for abatement is pending or the tax is in litigation does not relieve the collector from issuing the notices, demands, etc., required by law.

A misunderstanding on the part of certain collectors as to these requirements
2405 has occasioned a considerable loss to the Government of penalty and interest, especially where claims for abatement were pending. (T. D. 1995, June 12, 1914.)

2406 Notice of Assessment (Form 17) may lawfully be given by mail, and when so given is presumed to have been received. The burden rests on the taxpayer to prove the contrary in order to avoid penalty. (U. S. v. General Inspection & Loading Company, 204 F. 657.)

2407 [Comment: The following word was given to The Corporation Trust Company orally, regarding the practice of the Department relative to the proof "to the contrary." The taxpayer is required only to prove to the satisfaction of the Commissioner that he did not receive notice of assessment. Under such conditions, it has been the practice of the Bureau of Internal Revenue to waive the penalties and give the taxpayer an opportunity to pay his taxes. Of course, the Collector would be called on to produce his records to prove his assertion, that notice had been sent, but that would not stand in the way of the taxpayer offering proof that the notice did not reach him. (July, 1917)].

2408 **Notice and Demand when Taxpayer is Abroad, or Absent from Home in the Military or Naval Forces of the United States.**—By reason of absence in foreign countries or on account of traveling abroad, or of absence from their homes or places of business in the military or other service of the country, and the consequent delay in receiving mail, it is impossible for many individuals to receive notice and demand on Form 17 and make payment of the taxes assessed thereon so that such taxes can be received by the collector * * * within the ten-day period following the service of notice.

You are requested therefore to enter on Form 17, as the date on which such assessed
2409 tax becomes due and payable, as near as possible, a date ten days subsequent to the time that said notice should be received in the ordinary course of the mails by the taxpayer, and where it appears that the full amount of tax assessed was placed in the mails within the ten-day period after the receipt of Form 17, or in case notice so sent is not delivered in due time by reason of delay in the mail and satisfactory evidence of that fact is furnished, the penalty and interest in such cases will not be collected. This ruling applies to excess profits taxes as well as to income taxes.

2410 Where the office of a corporation, joint stock company, association or insurance company to which the collector addresses the notice and demand for income taxes or income and excess profits taxes is situated so far from the collector's office that normal conditions render it impossible for payment to reach the collector within ten days of the mailing of notice and demand, the procedure herein outlined with respect to individuals will govern with respect to corporations, joint stock companies, associations and insurance companies.

Except as herein indicated the five per cent penalty will be imposed where there
2411 is a failure of the tax payment to reach the collector within ten days of the day of mailing by the collector of the notice and demand. (T. D. 2679, March 23, 1918.)

2412 **Penalties for Failure to Pay Tax When Due.**—Upon failure to pay the tax when due and for 10 days after notice and demand, a penalty of 5 per cent of the amount of tax unpaid and interest at the rate of 1 per cent per month until paid shall be added to the amount of such tax. (Art. 231, ¶656, Reg. 33, Rev., Jan. 2, 1918.)

2413 **Delay in Payment of Tax from Estates of Insane, Deceased or Insolvent Persons.**—Receipt is acknowledged of your letter of March 29, 1916, reading, in part, as follows:

"Please refer to that portion of Paragraph E of the Income Tax Law [Identical provisions in Revenue Act of 1918 at ¶2397 above.] which exempts the estates of insane, deceased, or insolvent persons.

2414 (1) Does this exempt the agent of an insane person, the executor of a deceased person, or the receiver for an insolvent person, from penalty for failure to pay the tax in due course?

2415 (2) Does it exempt such fiduciary from penalty for failure to make the return in due course?

2416 (3) In the case of deceased persons, does it cover the tax due upon the return which is filed by the executor for the period from the first of the year to the date of death?

2417 (4) In the case of insolvent persons, does it cover the tax based on the return made by the insolvent person?"

2418 Your several inquiries are answered as follows:

2419 1. With reference to that paragraph of the Federal Income Tax Law to which reference is made, and which, in part, reads as follows: " * * * [if any tax remains unpaid after the date when it is due,] and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon the said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons," the office holds that the exemption provision contained therein applies in a case of non-payment of tax by reason of insanity, decease, or ininsolvency of the taxpayer occurring after a personal return has been rendered by the incapacitated person.

2420 2. The provision does not relate to returns required under the law from fiduciaries.

2421 3. No.

4. Yes, it being understood that a return was rendered in due course by the in-
2422 solvent person, and that insolvency occurred prior to required date of payment of tax. (Letter to The Corporation Trust Company, signed by Acting Commissioner David A. Gates, and dated April 1, 1916.)

2423 Law ¶381. **Ipso Facto Assessment of the Tax and Notice and Demand for the First Installment.**—"In the case of the first installment provided for in subdivision (a) the instructions printed on the return shall be deemed sufficient notice of the date when the tax is due and sufficient demand, and the taxpayer's computation of the tax on the return shall be deemed sufficient notice of the amount due."

2424 ¶Law 382. **$5 Penalty for Necessitating a Warrant of Distraint.**—"(f) In any case in which in order to enforce payment of a tax it is necessary for a collector to cause a warrant of distraint to be served, there shall also be added as part of the tax the sum of $5."

2425 Law ¶383. **Procedure when Commissioner Finds that a Taxpayer Designs to Prejudice or to Render Wholly or Partly Ineffectual Proceedings to Collect the Tax for the Preceding or Current Taxable Year.**—"(g) If the Commissioner finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the Commissioner shall declare the taxable period for such taxpayer terminated at the end of the calendar month then last past and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of said tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any action or suit brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision the finding of the Commissioner, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design. A taxpayer who is not in default in making any return or paying income, war-profits, or excess-profits tax under any Act of Congress may furnish to the United States, under regulations to be prescribed by the Commissioner with the approval of the Secretary, security approved by the Commissioner that he will duly make the return next thereafter required to be filed and pay the tax next thereafter required to be paid. The Commissioner may approve and accept in like manner security for return and payment of taxes made due and payable by virtue of the provisions of this subdivision, provided the taxpayer has paid in full all other income, war-profits, or excess-profits taxes due from him under any Act of Congress. If security is approved and accepted pursuant to the provisions of this subdivision and such further or other security with respect to the tax or taxes covered thereby is given as the Commissioner shall from time to time find necessary and require, payment of such taxes shall not be enforced by any proceedings under the provisions of this subdivision prior to the expiration of the time otherwise allowed for paying such respective taxes."

2426 Law ¶434. **Fractional Part of Cent to be Disregarded in Payment of Tax.**—"Sec. 1313. That in the payment of any tax under this Act not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent."

2427 In the payment of income tax a fractional part of a cent shall be disregarded unless it amounts to a half cent or more, in which case the fraction shall be increased to 1 cent. (Art. 41, ¶251, Reg. 33, Rev., Jan. 2, 1918.)

2428 Law ¶435. **Payment of the Tax by Means of Treasury Certificates of Indebtedness and Uncertified Checks.**—"Sec. 1314. That collectors may receive, at par with an adjustment for accrued interest, certificates of indebtedness issued by the United States and uncertified checks in payment of income, war-profits and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered." [¶3128.]

2429 **Instructions Relative to Acceptance of Uncertified Checks.**—In accordance with the provisions of Section 1010 [¶2428] of the Act of October 3, 1917, collectors may accept uncertified checks in payment of income and excess-profits taxes. If such check is not paid by the bank on which it is drawn, the person by whom it has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been received.

2430 Such uncertified checks as the depositary bank is willing to accept should be included in the certificate of deposit issued to the collector.

2431 All other uncertified checks will be carried by the collector as "cash on hand" and not credited as "Collections," as the dates of the certificates of deposit determine the dates of collections.

2432 The date on which the collector receives the check will be considered the one on which payment is made, unless the check is return dishonored.

2433 Such uncertified checks as the depositary bank is not willing to accept for immediate credit may be *deposited for collection* by the collector of internal revenue to his official credit, under his bond, with a regular depositary bank, and when the check or checks have been collected the proceeds should be immediately deposited by him with his other collections for the day. At the same time the collector will charge his account "Cash on hand" and credit the taxpayer from whom the particular uncertified check was received. (T. D. 2627, Dec. 28, 1917.)

2434 **Instructions to Public.**—1. Collectors should give the widest possible publicity, through newspapers and by all other available means, to the fact that all checks in payment of income and excess-profits taxes must be collectible at par (without any deduction). Taxpayers who are not sure that their checks will be paid at par should be advised to write beneath the amount "without deduction for exchange," or "with exchange."

Indorsement of Checks.—2. The collector need not, however, examine all checks to
2435 see whether or not they are collectible at par, but should stamp on the face of each the words "This check is in payment of an obligation to the United States and *must be paid at par*. No protest," with his name and title. If the bank on which a check is drawn should refuse to pay it at par, it will be returned through the depositary bank and should be treated in the same manner as a bad check (see paragraphs 4 and 5).

Obtaining Certificates of Deposit for Out-of-Town Checks.—3. All out-of-town checks
2436 for which the depositary bank is unwilling to issue an immediate certificate of deposit to the credit of the Treasurer of the United States should be deposited separately in a collection account as provided in T. D. 2627, dated December 28, 1917. The collection account will be charged and the Treasurer's general account credited by the issuance of a certificate of deposit on Form 15, either (a) as the checks are collected or (b) after a number of days as agreed upon with the depositary, subject to the Secretary's approval, not exceeding five days, depending upon the average time of collection.

Redeeming Bad Checks Deposited to the Credit of the Treasurer.—4. If any check
2437 for which a certificate of deposit to the credit of the Treasurer of the United States has been issued should be returned to the depositary bank unpaid, the collector will be promptly notified and the check will be held in suspense for a few days, during which the collector should make an effort to recover the amount from the taxpayer. If the amount of the check is recovered from the taxpayer, the collector should immediately turn it over to the depositary in exchange for the bad check, which should be returned to the drawer. If he fails to obtain the amount from the taxpayer within a reasonable time, the depositary will return the check with a letter of transmittal and ask a receipt from the collector. The collector should give such a receipt in duplicate, retaining one copy. The depositary will charge the amount to the Treasurer's account in its next daily transcript.

Redeeming Bad Check Deposited in Collection Account.—5. If a check deposited
2438 in the collection account should be returned unpaid, and no certificate of deposit on Form 15 covering the amount thereof has been issued, the amount of the check will be charged by the depositary to the collection account, after being held in suspense account for a few days while an effort is made to recover the amount from the taxpayer.

Collecting Taxes for Which Bad Checks Have Been Tendered.—6. Taxpayers
2439 whose checks have been returned uncollected by the depositary bank should be immediately notified, as indicated in paragraph 4, to make the checks good. If any taxpayer should fail to do so, the collector should proceed to collect the taxes by the usual methods, as though no check had been given.

Correcting Assessment List.—7. If the recapitulation of the assessment list for
2440 the month has not yet been sent to the Commissioner, cancel the original entry of the payment, at the same time noting in the "Remarks" column "Check returned unpaid; transferred to p. , 1 ," with the date, and reenter the item in the unpaid section of the list, with the notation "Transferred from p. , 1 ." Submit in support of a new entry a copy of the collector's letter to the taxpayer with regard to the non-payment of the check. Be careful not to duplicate the charge in the monthly recapitulation of the list.

8. If the monthly recapitulation has gone forward make a note in the "Remarks"
2441 column, opposite the original entry, "Check returned unpaid," with the date, and let the item stand as an unpaid item to be cleared by an entry of the date on which the amount is finally paid.

Posting Records 1 and 9.—9. Record 1 for income tax collections should be posted
2442 in accordance with previous instructions and the daily totals should be transferred to line 1 or Record 9. As the daily total in Record 9 will not agree with the total deposit for the day in the Treasurer's general account, the certificate of deposit numbers should not be entered on line 48 of Record 9.

10. The balance in the collection account at the close of each month should be
2443 subtracted from the balance at the close of the preceding month (or vice versa).
If the balance in the collection account shows an increase for the month, such increase should be added to the amount of returned checks (if any) charged back to the Treasurer's general account during the month and the total should be entered on line 8 in the total column of Record 9 in red ink, to be deducted from the other entries in the same column.

11. If the balance in the collection account shows a decrease for the month, and
2444 the amount of returned checks charged back to the Treasurer's general account for the month is less than the decrease in the balance, the amount of such returned checks should be substracted from the decrease in the balance and the difference entered in black ink on line 8 in the total column of Record 9, to be added to the other entries in the same column.

12. If the amount of returned checks charged back to the Treasurer's general
2445 account for the month should exceed the decrease in the balance for the month, such decrease should be subtracted from the amount of such returned checks and the difference entered in red ink on line 8 in the total column of Record 9.

13. The net total for each month entered on line 9 of Record 9 will thus agree
2446 with the amount deposited that month on account of collections on lists.

Monthly Accounts.—14. Form 325 should be prepared from Record 1 in accordance
2447 with previous instructions.
At the close of the month the entry on line 8 in the total column of Record 9 (black
2448 or red ink) should be entered in column 8 of the second table on Form 51B, on the blank line following the line for "Old regular" lists. If the amount entered in column 8 is in black ink the same amount should be entered in red ink on the same line in column 11. If the amount entered in column 8 is in red ink the same amount should be entered in black ink on the same line in column 11.

15. The amount of returned checks charged to the Treasurer's general account
2449 each month should be deducted on Form 49 from the total of the certificates of deposit for the month in which the checks are returned. The entry making the deduction should be supported by the banks' letters returning the checks.

16. The collector should submit with his monthly account on Form 51B a monthly
2450 statement signed by the cashier of the depositary bank in the following form:

Day	Total amount deposited each day	Amount transferred each day to Treasurer's general acct.	Checks charged back each day	Balance
Balance from last month's account.....			.....	.....
1.....	.....	.....	.....	.....
2.....	.....	.....	.....	.....
Etc.....	.....	.....	.....	.....

Quarterly Account.—17. On Form 79 the balance in the collection account should be
2451 included in item 9 as part of the balance due the United States and interlined in the analysis of the balance (at the foot of the account) as "Uncollected checks." (T. D. 2666, March 8, 1918.)

2452 Instructions Relative to Acceptance of Certificates of Indebtedness for Income Taxes.—[The law formerly read "at par and accrued interest" instead of "at par with an adjustment for accrued interest."] Collectors of Internal Revenue are directed to receive at par United States Treasury certificates of indebtedness of the Tax Series of 1919, dated August 20, 1918, and maturing July 15, 1919, and of Series T, dated November 7, 1918, and maturing March 15, 1919, in payment of income and profits taxes when payable at or before the maturity of the certificates. The amount, at par, of the Treasury certificates of indebtedness presented by any taxpayer in payment of income and profits taxes must not exceed the amount of the taxes to be paid by him. Deposits of certificates of indebtedness must be made by collectors with the Federal Reserve Banks of the districts in which the respective collectors' offices are located. Such certificates of indebtedness may be accepted by the collector prior to the date the tax is due and in that case should be forwarded by the collector to the Federal Reserve Bank to be held for account of the collector until the date the tax is due and for deposit on such date. Certificates of indebtedness should be stamped as follows by the collector and when so stamped transmitted to the Federal Reserve Bank by registered mail uninsured:

....., 191....

This certificate has been accepted in payment of income and profits taxes and will not be redeemed by the United States except for credit of the undersigned.

.....

Collector of Internal Revenue
for the ..... district of.....

Each unmatured coupon attached to each such certificate of indebtedness must be stamped across the face by the collector as follows: "Paid."

2453 All coupons maturing on or before the date the tax is due must be detached by the taxpayer and collected in ordinary course; but all other coupons must be attached to the certificates and forwarded to the Federal Reserve Bank. Any accrued interest to the date the tax is due not covered by coupons detached as above provided will be remitted to the taxpayer by the Federal Reserve Bank by check and the collector must furnish to the Federal Reserve Bank the name and address of the taxpayer, the amount and serial numbers of the certificates presented in each case, the date of issue of the certificates, and the date the tax is due. Collectors shall in no case pay interest on such certificates nor accept them for an amount other or greater than their face value. Receipts given by collectors to taxpayers should show the amount of certificates of each series received in payment of taxes.

2454 The collectors should make in tabular form a schedule in duplicate of the certificates of indebtedness to be sent to the Federal Reserve Bank, showing the serial number of each certificate, date of issue, and face value. Certificates of indebtedness accepted prior to the date the tax is due must be scheduled separately, and such date must appear on the schedule. At the bottom of the schedule there should be written or stamped "Income and Profits Taxes $.....," which must agree with the total shown on the schedule. Such income and profits tax deposits must in all cases be shown on the face of the certificate of deposit (National Bank Form 15) separate and distinct from the item of miscellaneous internal revenue collections (formerly called Ordinary), but it is not necessary to give the separation into corporation income, individual income and profits taxes. One copy of this schedule must accompany the certificates sent to the Federal Reserve Bank, and the other be retained by the collector.

2455 Until certificates of deposit are received from the Federal Reserve Banks, the amounts must be carried as cash on hand, and not credited as collections, as the dates of certificates of deposit determine the dates of collections.

2456 For the purpose of saving taxpayers the expense of transmitting such certificates as are held in Federal Reserve cities to the office of the collector in whose district the taxes are payable, taxpayers desiring to pay income and profits taxes by Treasury certificates of indebtedness acceptable in payment of such taxes, should communicate with the collector of the district in which the taxes are payable and request from him authority to deposit such certificates with the Federal Reserve Bank in the city in which the certificates are held.

2457 Collectors are authorized to permit deposits of Treasury certificates of indebtedness in any Federal Reserve Bank with the distinct understanding that the Federal Reserve Bank is to issue a certificate of deposit in the collector's name covering the amount of the certificates of indebtedness at par and to state on the face of the certificate of deposit that the amount represented thereby is in payment of income and profits taxes. The Federal Reserve Bank should forward the original certificate of deposit to the Treasurer of the United States, with its daily transcript, and transmit to the collector the duplicate and triplicate, accompanied by a statement giving the name of the taxpayer for whom the payment is made in order that the collector may make the necessary record and forward the duplicate to this office. (T. D. 2778, Dec. 11, 1918.)

2458 **Payment of Taxes at Collector's Offices.**—In view of the conditions existing in the offices of many collectors, especially in the rush season of June and July, beginning with June 1, 1915, collectors may close to the public the sale of stamps and the payment of taxes not earlier than 3 p. m. daily, and on Saturdays or other days when the office is closed at 1 p. m. by order of the Secretary of the Treasury not earlier than 12 noon, to enable the cashiers to balance up with the bookkeepers before making their daily deposits. [Read ¶2462 below.]

2459 The public should be given due notice of any change in the hours for the sale of stamps and payment of taxes.

2460 To accommodate those who may come to make payments after the closing time, a mail box should be provided at the cashier's window for the deposit of such collections. [See Treasury Decision 1728, dated September 28, 1911 [office routine].)

2461 This order in no wise affects the hours of service required daily of each government employee—nor the hours that collector's offices will be open for the transaction of business other than the sale of stamps and payment of taxes. (T. D. 2205, May 19, 1915.)

2462 The following instructions issued by the Assistant Secretary of the Treasury on May 3 relative to depositing collections are published for your information and guidance:

To Collectors of Customs and Internal Revenue:

In view of the existing conditions in the offices of many collectors and the hour at which Government depositaries require daily deposits to be made therewith, collectors may close their business day at an hour sufficiently early to enable them to make the deposits for that day before the banks close.

After balancing the accounts for the day, the collection of taxes and the sale of stamps should be resumed and continued until the official closing time, and such transactions should be accounted for as collections of the following business day, except on the *last business day of each fiscal year*, when all collections made for that day should be deposited with the regular depositary, which will be instructed to remain open to receive the particular deposit.

Please instruct your deputies who deposit receipts to be governed in accordance with the above.

This method is adopted for the convenience of both the collectors and the depositaries and in order that all collections actually made within the fiscal year may be deposited therein and so covered into the Treasury.

Wm. P. Malburn,
Assistant Secretary.

To the Assistant Treasurers of the United States, Federal Reserve Banks and Active National-Bank Depositaries:

Collectors of customs and internal revenue have been authorized to close the business day in their respective offices sufficiently early to enable them to deposit their collections during banking hours, and to include collections made later in the day as transactions of the next day, except on the *last business day of each fiscal year*, when they will deposit the receipts for the entire day.

You are therefore requested to remain open on the last business day of the fiscal year for the purpose of receiving deposits from the collecting officers who deposit with your bank, notwithstanding the fact that the bank has been closed to the public at the usual hour. This will enable the department to include all customs and internal-revenue collections made during a fiscal year in its accounts and reports for that year.

Compliance with the above instructions is requested.

Wm. P. Malburn,
Assistant Secretary.

2463 The instructions contained in T. D. 2205 [¶2458+], dated May 19, 1915, are modified accordingly. (T. D. 2332, May 8, 1916.)

2464 **Income Tax Due Has Status of Debt to United States.**—Tax due on income has the status of a debt due to the United States. Persons receiving property charged with such indebtedness must answer for the debt. (Art. 39, ¶248, Reg. 33, Rev., Jan. 2, 1918.)

2465 Law ¶384. **Receipts for Taxes.**—"Sec. 251. That every collector to whom any payment of any tax is made under the provisions of this title shall upon request give to the person making such payment a full written or printed receipt, stating the amount paid and the particular account for which such payment was made;" [¶3044.]

2466 The department has received from time to time complaints from taxpayers, especially those paying corporation income tax, that collectors refuse to sign what is known as commercial receipts, or refuse to indorse what is generally known as voucher checks, many of such receipts and checks stating on the face that by indorsement the voucher check or receipt becomes a receipt in full for amount and purpose drawn.

The only official receipt for taxes that collectors may sign under the law are stamps,
2467 where stamps are issued, or Form 1, when the tax is not payable by stamp, which receipts are to be issued to every taxpayer for taxes paid. However, the department has no objection to collectors signing commercial receipts or voucher checks (subject in the latter case to the rules of the depositary), but they should, in signing such receipts or vouchers, write or stamp across the face thereof the words "Not an official receipt." The official receipt on Form 1 must, however, be furnished; and it is to be distinctly understood that an unofficial receipt is not in any manner binding on the department, and will not be received by it as evidence of payment of the tax. (T. D. 2226, July 14, 1915.)

2468 **Deputy Collectors to Give Personal Receipts for Collections Made by Them.**—After careful consideration, this office has reached the conclusion that, in order thoroughly to protect the interests of both the taxpayers and the Government, some evidence of payment should be given at the time to taxpayers who pay taxes directly to deputy collectors, and that such a receipt as herein described is not in violation of Section 3188, which prohibits the issuance of a receipt *in lieu* of a stamp.

You are therefore instructed to direct your deputies hereafter to give to special and
2469 other taxpayers, at the time of payment, a personal receipt for moneys collected, substantially in the following form:

"Received of JOHN DOE $....., to be forwarded to the Collector to cover special tax due as ....."

2470 In case the payment is for stamp tax or for amounts other than special tax, the form of receipt may be modified accordingly. (T. D. 2341, June 19, 1916.)

2471 Law ¶385. **Receipts to be Given for Payments Made by Withholding Agents on Account of Amounts Deducted at the Source.**—"and whenever any debtor pays taxes on account of payments made or to be made by him to separate creditors the collector shall, if requested by such debtor, give a separate receipt for the tax paid on account of each creditor in such form that the debtor can conveniently produce such receipts separately to his several creditors in satisfaction of their respective demands up to the amounts stated in the receipts; and such receipt shall be sufficient evidence in favor of such debtor to justify him in withholding from his next payment to his creditor the amount therein stated; but the creditor may, upon giving to his debtor a full written receipt acknowledging the payment to him of any sum actually paid and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt."

2472 **Procedure Under Which Collectors Are Authorized to Refund Excessive Payments of Internal Revenue Tax.**—Beginning April 1, 1918, there will be advanced to each Collector of Internal Revenue, at the beginning of each quarter of the fiscal year, out of the appropriation for the refundment of internal revenue taxes, a sum estimated to be sufficient for the repayment to taxpayers of certain excessive collections, as follows:—

1. Collections exceeding the tax shown by the return of the taxpayer to be due.
2. Collections exceeding the amount of tax shown by the assessment list to be due.
3. Duplicate payments where:—
   (a) Both are made in advance of assessment;
   (b) Both are made after assessment;
   (c) One is made before, and one after assessment.

2473 1. *Procedure where a collection has exceeded the tax shown in the taxpayer's return as due.*

2474 The Collector will enter on the assessment list the full amount paid, and in the "Remarks" column of the list will note the amount of the excess.

2475 The complete data regarding the excessive collection is then to be entered on the schedule of Claims for Authority to Refund, Form 751. The "Paid," "Due," and "Refundable Excess" columns on the Form will be totaled.

Form 751 is to made in triplicate, one copy to be retained by the Collector, and
2476 two to be forwarded securely attached to the proper assessment list. A single Form 751 cannot be used for items on lists of the separate classes.

2477 In the Proving Division of the Bureau the amount shown on Form 751 as due will be checked against the taxpayer's return, and the amount shown on the assessment list as paid will be checked against the similar item on Form 751.

The original Form 751 will remain attached to the assessment list and will form
2478 an integral part thereof, so that the Commissioner's signature of approval of the assessment list will be, to the Collector, sufficient evidence of the Commissioner's approval of the claim. To effectuate this, there should be typewritten on the first page of Form 110, below the line reading, "Total Chargeable to Collector," the words, "Amount Refundable on Form 751."

Upon receipt of the returned claim, thus determined as approved by the Com-
2479 missioner, the Collector will immediately make refund to the taxpayer, clearly designating upon the draft the nature of the refund, as, for instance, "Refund under Claim on Form 751, March list, 1918." The list to be designated is the list on which the claim was approved, rather than the list on which the assessed or overpayment was reported.

2480 2. *Procedure where a collection has exceeded the tax.*

The procedure will be identical with that outlined under subheading (1), above, except that in the "Remarks" column on the assessment list the exact amount paid is to be noted.

2481 3. *Procedure where a tax has been paid wholly or in part in duplicate.*
2482 (a) Where both payments are in advance, there shall be entered on Form 751 a notation showing both lines of the advance payment list or lists on which payments appear. If the amounts of the two payments differ, the Collector shall claim authority for refund of the lesser payment.
2483 (b) Where the assessment has been made, entries will be made on the assessment list to show both dates of payment.
2484 A similar notation should be made under the item claimed on Form 751 as refundable.
2485 The total amount collected is to be reported on Forms 325 and 51 B.
(c) Where one payment has been made before and one after the entry of assessment,
2486 notations will be made on Form 751 showing the line of the list on which the advance payments was reported and the line on which the assessment was entered.
2487 Except as indicated, the balance of procedure under subheading (3) will correspond to the procedure fully outlined under subheading (1). (T. D. 2688, April 1, 1918.)

2488 Law ¶386. **Credit or Refund, on Disclosure by Examination of Any Return, of Amount Paid in Excess of that Properly Due.**—"Sec. 252. That if, upon examination of any return of income made pursuant to this Act, the Act of August 5, 1909, entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," the Act of October 3, 1913, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," the Revenue Act of 1916, as amended, or the Revenue Act of 1917, it appears that an amount of income, war-profits or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of section 3228 of the Revised Statutes [¶2615], the amount of the excess shall be credited against any income, war-profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer:" [¶3045.]

2489 Law ¶387. **Five-Year Limitation for Making Claim for Credit or Refund.**—"*Provided*, That no such credit or refund shall be allowed or made after five years from the date when the return was due, unless before the expiration of such five years a claim therefor is filed by the taxpayer."

2490 **Claims Heretofore Rejected May be Reopened.**—Sir: This office is in receipt of your letter of the 26th ultimo, asking for a ruling as to whether, under section 14, paragraph A, of the act of September 8, 1916, claims for refund which have once been rejected by the commissioner because of the statute of limitation in existence at that time may be reopened. The portion of section 4 referred to is in the following words:

Provided, That upon the examination of any return of income made pursuant to this title, the act of August 5, 1909, * * * and the act of October 3 1913, * * * if it shall appear that amounts of tax have been paid in excess of those properly due, the taxpayer shall be permitted to present a claim for refund thereof notwithstanding the provisions of section 3228.

This office is of the opinion that claims can now be made for refund under that
2491 provision. Claims rejected can also be reopened if the question involves an examination of the return. The power does not extend to other claims whose adjustment does not necessitate an examination of the return. (T. D. 2396, Nov. 1, 1916.)

2492 **Claims for Refund on Account of Taxes Paid Under the Act of Oct. 3, 1913, on Stock Dividends.**—In order to complete claims for the refunding of income tax collected under the Act of October 3, 1913, on stock dividends; that is, claims based upon the decision of the Supreme Court in the case of Towne vs. Eisner ¶2738], the following evidence is required.

An affidavit showing:

1. The name of the corporation which declared and paid the stock dividend.
2. The date of declaration of the stock dividend and date of receipt by claimant.
3. In which year's return of annual net income did the claimant include this stock dividend?
4. Under what item on the return was the value of the stock dividend included, and what was the valuation placed upon the dividend in the return?
5. Has the stock thus received and returned as a dividend been sold by the claimant, and if so, what was the date of sale; how much did claimant receive from the sale; and what part of the total amount received from the sale was included by the claimant in its return of annual net income for the year in which the sale occurred?
6. Did the dividend consist of stock of the corporation distributing the dividend to claimant, or did it consist of stock acquired by the distributor in another corporation?

Note.—A stock dividend is a distribution by a corporation to its stockholders
2493 of capital stock of the distributing corporation. A distribution of capital stock other than that of the distributing corporation is not a stock dividend but a dividend in property.

2494 The receipt on Form No. 1 should also be filed with the claim.

In giving publicity to this requirement please inform taxpayers that there is no
2495 possible advantage in the employment of special attorneys for the prosecution of claims. Preparations are being made for the prompt handling of these cases and it is believed that they can be disposed of with minimum delay and inconvenience to the taxpayer. Claims filed directly by the claimants will receive in every respect as careful and expeditious consideration as those filed through special attorneys. (IT-Cls. Mim. 1795, Feb. 26, 1918.)

2496 **Refund of Taxes Paid on Account of Stock Dividends Under Revenue Acts of 1916 and 1917, in Event such Taxes are Hereafter Held to Have Been Erroneously Assessed.**—Receipt is acknowledged of your letter of October 28, 1918, in which * * * you ask to be advised whether persons who wish to take advantage of a possible decision that the taxing of stock dividends as income is unconstitutional, would be required to begin suit within two years after the payment of the tax in order to prevent their right to recovery being outlawed, in accordance with the provisions of Sec. 3227 Revised Statutes [¶2614.]. ¶In reply, you are advised that Sec. 14 (a) [¶2488] of the Act of September 8, 1916, provides in part as follows: "Upon the examination of any return of income made pursuant to this title, the Act of August 5, 1909—and the Act of October 3, 1913—if it shall appear that amounts of tax have been paid in excess of those properly due, the taxpayer shall be permitted to present a claim for refund thereof, notwithstanding the provisions of Sec. 3228 [¶2615] Revised Statutes." ¶In accordance with that portion of the Section above quoted, it is held that it is not necessary for an individual to institute suit or file a claim within two years after the payment of income tax, in order to obtain a refund of taxes which, by a later court decision or ruling of the Department, are held to have been erroneously assessed. (Letter to Herbert J. Lyall, New York, N. Y., signed by Deputy Commissioner L. F. Speer, and dated Nov. 2, 1918.)

Lower Court Decision on Stock Dividends Under the Act of September 8, 1916, ¶815.

2497 Law ¶436. **Taxes Erroneously Assessed or Collected, Penalties Collected Without Authority, and Excessive Taxes May be Remitted or Refunded by the Commissioner**—"Sec. 1316. (a) That section 3220 of the Revised Statutes is hereby amended to read as follows:

'Sec. 3220. The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expenses of suit [¶2521]; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section'." [Effective as amended on day after "the passage" of the Revenue Act of 1918, ¶2823. See ¶2603.]

2498 **Abatement of Second Assessments and Refund of Taxes Collected under Second Assessments.**—[Comment.—The following, formerly incorporated in Sec. 3220 Revised Statutes, ¶2497, has been eliminated:

"*Provided*, That where a second assessment is made in case of a list, statement, or return which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, unless it is proved that said list, statement, or return was not false or fraudulent, and did not contain any understatement or undervaluation."

A companion change has been made in Sec. 3225 Revised Statutes, ¶2590, which governs directly the remitting of second assessments, the refund of taxes collected on such assessments, and the recovery by suit of taxes so paid.]

2499 **Form 47. Preparation of Claims for the Abatement of Taxes and Penalties Alleged to Have Been Erroneously or Illegally Assessed or to be Abatable Under Remedial Acts.**—Claims for the abatement of taxes or penalties erroneously or illegally assessed or which are abatable under remedial acts, etc., must be made out upon Form 47, and must be sustained by the affidavits of the parties against whom the taxes were assessed, or of other parties cognizant of the facts, and must be accompanied by affidavits of the deputy collectors of the divisions in which the claims arise.

2500 But if the deputy collector has reason to doubt the correctness of the statements made by a claimant he should modify his affidavit accordingly, a space being left for that purpose at the close of the affidavit. If he has not investigated all the facts he should state in the blank space left in the body of the affidavit for that purpose what facts he has not investigated.

2501 If there are any objections to a claim, the collector should be careful to state them fully in a certificate to be attached to and made part of the claim. In some cases, where the collector has certified to the correctness of claims, the deputy collector makes exceptions to the facts as stated by the claimants. Unless the collector makes a special explanation in every such case, the claim will be returned for such explanation.

2502 The claim should be still further supported by a certificate of the collector showing the list, page, and line of all assessments therein referred to, not only of the assessment of the tax for the abatement of which the claim is filed, but also of each and every other assessment mentioned in the claim. Even where only a portion of a tax is claimed as erroneous, the collector should be careful to certify the *full amount* assessed.

2503 When a tax has been assessed and turned over to the collector, the presumption is that the assessment is correct. The burden of proof in rebutting that presumption, and showing that it was improperly or illegally assessed or that relief should be given under a remedial statute, rests upon the applicant for abatement. The affidavits must, therefore, contain full and explicit statements of all the material facts relating to the claims in support of which they are offered, and which are essential to their proper consideration. Nothing should be left to mere inference, but all the facts relied upon should appear on the papers themselves. It is only the correctness of the statement of facts to which the deputy collector certifies, not the legality of the claim. The *legality* of the claim is to be determined by the Commissioner of Internal Revenue upon the facts presented and proved by the affidavits.

2504 When a case is compromised, in which an assessment is involved, the amount paid as tax should be credited to the list. The amount, if any, remaining outstanding, should be claimed for abatement on Form 47, if the terms of the compromise so required. (Art. 258, ¶734–739, Reg. 33, Rev., Jan. 2, 1918.)

2505 Claims on Form 47 for abatement of errors in assessment made in the collector's office, which errors are not corrected by the filing of Form 488, should be executed by the collector, but briefed in the name of the taxpayer against whom the assessment was made. [Read at ¶2558].

2506 When claims for the abatement of taxes, either as uncollectible or erroneous, are allowed in the office of the Commissioner of Internal Revenue, schedule Form 7220 for abatement is drawn for the aggregate of so much as is abated upon each claim named in the schedule. The schedule is sent directly to the collector of internal revenue to whom the taxes are charged, and is his authority for taking credit on Form 51 B and his quarterly account, Form 79, for taxes abated. *No credit for abatements shall be taken except upon schedule Form* 7220 *from the Commissioner of Internal Revenue.* Orders for abatement are sent to the Auditor for the Treasury Department. [Read at ¶2558.] (Art. 259, ¶740–741, Reg. 33, Rev., Jan. 2, 1918.)

2507 If a collector should discover from the schedule of abated taxes that a mistake has occurred, either in having abated a larger amount than that claimed, or in abating a tax which has been previously abated, he should immediately notify the commissioner of the fact, so that the order may be recalled, and the error be corrected by the issuing of a new one in its place. In such a case no credit, *for any amount whatever*, should be taken upon Form 51 B, or upon the quarterly account until the order of abatement and schedule have been corrected. [Read at ¶2558.] (Art. 260, ¶742, Reg. 33, Rev., Jan. 2, 1918.)

2508 **Filing of a Claim for Abatement Does not Operate as a Delay of Collection.**—The filing of a claim for the abatement of a tax alleged to have been erroneously assessed does not necessarily operate as a suspension of the collection of the tax, or make it any less the duty of the collector to exercise due diligence to prevent the collection of the tax being jeopardized. He should, if necessary, collect the tax and leave the taxpayer to his remedy by claim on Form 46. (Art. 261, ¶743, Reg. 33, Rev., Jan. 2, 1918.)

2509 **Penalty of 5 Per Cent and Interest at the Rate of 1 Per Cent or ½ of 1 % a Month, Section 3184, Revised Statutes.**—Where it is not otherwise provided the collector shall in person or by deputy, within 10 days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes within 10 days after the service or the sending by mail of such notice it shall be the duty of the collector or his deputy to collect the said taxes, with a penalty of 5 per cent. additional upon the amount of taxes and interest at the rate of 1 per centum a month. (Art. 262, ¶744, Reg. 33, Rev., Jan. 2, 1918.)

2510 When an assessment is made for a tax or penalty and demand made for payment, if a claim for abatement (From 47) is filed within 10 days after such demand and accepted by the collector, the amount of the 5 per cent penalty on the tax claimed will wait on the determination of the claim. Upon receipt of the notice of rejection of the claim (or so much thereof as shall not be allowed) the collector should immediately notify the party assessed and demand the payment of the tax; if the tax is not then paid within 10 days after mailing of the notice to the claimant by the collector of the rejection of the claim, the 5 per cent penalty *accrues* on the amount not allowed. If entire amount of assessment is not demanded in claim for abatement and balance of tax is not paid within the required 10 days, the 5 per cent penalty accrues on the balance not claimed. Interest at 1 per cent per month continues to run and should be collected with the tax at the time of payment for the full number of calendar months which intervene between the date of the expiration of the first 10 days' notice and the date of the payment of the tax, notwithstanding the fact that a claim for abatement has been filed. [Interest runs at ½ of 1 per cent only, as to any amount which is the subject of a bona fide claim for abatement, ¶2398.] (Art. 263, ¶745, Reg. 33, Rev., Jan. 2, 1918.)

2511 **Duplicate Charges.**—Taxes erroneously or illegally assessed are by the Commissioner of Internal Revenue abated to the taxpayer, while taxes uncollectible are simply abated by the commissioner to the collector against whom they are charged: but amounts which by error or otherwise have been twice charged to a collector, are held by the accounting officers to be matters of account, and not subjects for abatement.

2512 The collectors shall use Form 488 to adjust the errors in income-tax matters held to be matters of account and not subjects for abatement, and forward the completed form to the Commissioner of Internal Revenue, marked "Income Tax Division." [Read at ¶2558.]

2513 See Regulations No. 2, Article 41, pages 47 and 48, for further information to collectors as to entries to be made in records and accounts. [Read at ¶2558.] (Art. 264, ¶746–748, Reg. 33, Rev., Jan. 2, 1918.)

2514 **Form 46.—Preparation of Claims for the Refunding of Taxes and Penalties Claimed to have Been Erroneously or Illegally Collected, or Refundable Under Remedial Statutes.**—Claims for the refunding of assessed taxes and penalties must be made out upon Form 46. In this case, as in that of claims for abatement upon Form 47, the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath. The claim should be still further supported by an affidavit of the deputy collector of the proper division, and by the certificate of the collector, showing the list, page and line upon which the assessment appears, the amount of the tax, and the *date of payment thereof.*

2515 *Collectors and deputy collectors are cautioned that these certificates and affidavits should not be made in a merely perfunctory manner. Claims have been received at the office of the Commissioner of Internal Revenue wherein the statements of the claimant have been certified by the collector and deputy collector as "in all respects just and true," whereas a slight examination of the records of their own offices would have disclosed an entirely different state of facts.* (Art. 265, ¶749–750, Reg. 33, Rev., Jan. 2, 1918.)

2516 A claim for refunding should be made in the name of the party assessed, if living; if he is dead, the claim should be made in the name of the executor or administrator.

Certified copies of the letters of administration or letters testamentary, or other similar evidence, should be annexed to the claim to show that the claimant is administrator, etc.

2517 The affidavit may be made by an agent of the party assessed; but in such a case, a power of attorney must accompany the claim. (Art. 266, ¶751–752, Reg. 33, Rev., Jan. 2, 1918.)

2518 **Claims for Refund of Excess Amounts Withheld at the Source.**—When, however, claims for exemption * * * as above described [*i. e.*, made to the source by the taxpayer] are not filed within the prescribed time the tax collected in excess can be remitted only on presentation of a claim for refund under the provisions of Section 3220, Revised Statutes [paragraph 2497] said claims to be made either by the withholding agent against whom the assessment was made, or by the person on account of whom such taxes were withheld.

2519 Claims for abatement of taxes erroneously assessed, or which are excessive in amount, may, prior to collection thereof, be filed under the provisions of said Section 3220, Revised Statutes, either by the withholding agent against whom the assessment was made, or by the persons on account of whom such taxes were withheld. (Art. 33, Reg. 33, Jan. 5, 1914.)

2520 When it is found that a withholding agent has failed to withhold tax and make return, field officers will at once procure the return required by law and regulations. The delinquent return should be accompanied by a claim, executed on Form 47, for the abatement of such items of tax as can be shown to have been paid by the individual taxpayers. The delinquent withholding return will then receive consideration in connection with the personal returns made or to be made by the individuals concerned. (Mim. 1265, Jan. 23, 1915.) [In connection with the above paragraph read ¶734.]

2521 **Claims for Sums Recovered by Suit.**—Claims for sums of money recovered by suit for any of the causes, and against any of the officers, enumerated in section 3220, Revised Statutes, should be made upon Form 46. The claimant should state the grounds of his claim under oath, giving the names of all the parties to the suit, the cause of action, date of its commencement, the date of the judgment, court in which it was recovered, and its amount. To this affidavit there should be annexed a duly certified copy of the record of the court in the case, copy of the final judgment, certificate of probable cause, and itemized bill of costs paid receipted by the clerk or other proper officer of the court. (Art. 274, ¶772, Reg. 33, Rev., Jan. 2, 1918.)

2522 **Payment of Claims Allowed.**—Warrants in payment of claims allowed will be drawn in the names of the parties entitled to the money, and shall, unless otherwise directed, be sent by the Treasurer of the United States directly to the proper parties or their duly authorized attorneys or agents. But if the claimants are indebted to the United States for taxes, they must be paid before the warrants are delivered. (Art. 267, ¶753, Reg. 33, Rev., Jan. 2, 1918.)

2523 **Deductions of Amounts Due by Claimants, etc.**—Attention is called to the following act, approved March 3, 1875 (18 Stat. L., 481), concerning—

2524 "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That when any final judgment recovered against the United States or other claim, duly allowed, by legal authority, shall be presented to the Secretary of the Treasury for payment, and the plaintiff or claimant therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Secretary to withhold payment of an amount of such judgment or claim equal to the debt thus due to the United States; and if such plaintiff or claimant assents to such set-off, and discharges his judgment or an amount thereof equal to said debt or claim, the Secretary shall execute a discharge of the debt due from the plaintiff to the United States. But if such plaintiff denies his indebtedness to the United States, or refuses to consent to the set-off, then the Secretary shall withhold payment of such further amount of such judgment, or claim, as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the United States to final judgment. And if such debt is not already in suit, it shall be the duty of the Secretary to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted to final judgment with all reasonable dispatch. And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amount so withheld as before provided, the balance shall then be paid over to such plaintiff by such Secretary, with six per centum interest thereon, for the time it has been withheld from the plaintiff." (Art. 268, ¶754–755, Reg. 33, Rev., Jan. 2, 1918.)

2525 **Instructions to Collectors Relative to Refund Claims.**—Section 14 (*a*), act of September 8, 1916, provides that upon the examination of any return of income made pursuant to the act of August 5, 1909, levying an excise tax, and the acts of October 3, 1913, September 8, 1916 (and the same act as amended October 3, 1917), and the act of October 3, 1917, *levying an income tax*, "and for other purposes," if it shall appear that amounts of tax have been paid in excess of those properly due, the taxpayer shall be per-

mitted to present a claim for refund thereof notwithstanding the provisions of section 3228 of the Revised Statutes. (Art. 269, ¶757, Reg. 33, Rev., Jan. 2, 1918.)

2526 The lodging of an appeal [¶2514] (claim for refund) made out in due form with the proper collector of internal revenue, for the purpose of transmission to the Commissioner of Internal Revenue in the usual course of business under the requirements of the regulations of the Secretary of the Treasury, is in legal effect a presentation of the appeal to the Commissioner. (14 Otto, 728; 28 Int. Rev. Rec., 87.) (Art. 270, ¶758, Reg. 33, Rev., Jan. 2, 1918.)

2527 All claims for the refunding of taxes should be received by the collector and forwarded to the Commissioner of Internal Revenue. In no case should the collector refuse to forward a claim for the reason that it was not presented to him within two years after payment of tax. (Art. 271, ¶759, Reg. 33, Rev., Jan. 2, 1918.)

2528 The collector should keep a perfect record, in the book furnished for the purpose, of all claims presented to the Commissioner, and must certify as to each claim whether it has been before presented or not. (Art. 272, ¶760, Reg. 33, Rev., Jan. 2, 1918.)

2529 If any claim on form 46 or 47 is presented without the affidavit of the deputy collector, the reason for the omission must be given.

If in any case, after a full investigation, the collector can not certify to the facts
2530 set forth in the affidavit, he should state the reason for his dissent, and allow the party to corroborate his statements by such other proof as he may be able to furnish.

2531 All amendments in the statement of facts in claims must be made under oath.

2532 All copies should be certified to be true ones.

2533 Care should be taken to certify, in every instance where a previous claim has been presented in the same case, the date of the previous claim.

When an affidavit is made upon form 46 by some other party than the one against
2534 whom the tax was assessed, the name of the party assessed should appear upon the outside of that form.

When a firm is the claimant the claim should be in the name of the firm; but a
2535 member of the firm or authorized agent or attorney should swear to the facts set forth, including that of membership or agency, and should subscribe his individual name. The artificial person, to wit, the firm, can not make oath.

2536 In claims for abatement or refunding the collector will in all cases insert in his certificate the *full amount of the assessment, and not simply the amount claimed.*

When the collector has twice collected the tax upon the same assessment he will
2537 charge himself with the duplicate payment on form 58; and when a claim is made he will state in his certificate, upon form 46, that he has so charged himself with said amount, stating the month, list, page, line, amount, and date of payment.

When a claim for refunding is made on the ground of a duplicate assessment and
2538 payment, the collector will certify to the duplicate assessment and payment of form 46, giving the full amount both of the assessment and of the payment, and will also give the page, list, and line in each case.

Many of the rules for the preparation of claims upon form 47 are equally applicable
2539 to the preparation of those upon form 46. They should be followed wherever they are not manifestly inapplicable. (Art. 273, ¶761–771, Reg. 33, Rev., Jan. 2, 1918.)

2540 **Special Instructions to Collectors in Connection with Claims for Refund or Abatement of Income Tax** [Read at ¶2558.]—**Section 3218, Revised Statutes.**—Every collector shall be charged with the whole amount of taxes, whether contained in lists transmitted to him by the Commissioner of Internal Revenue or by other collectors, or delivered to him by his predecessor in office, and with the additions thereto, * * * , and with all moneys collected for penalties, forfeitures, fees, or costs; and he shall be credited with all payments into the Treasury made as provided by law, * * * , and with the amount of taxes contained in the lists transmitted, in the manner heretofore provided, to other collectors, and by them receipted as aforesaid; also with the amount of the taxes of such persons as may have absconded or become insolvent prior to the day when the tax ought, according to the provisions of law, to have been collected, and with all uncollected taxes transferred by him, or by his deputy acting as collector, to his successor in office: *Provided*, That it shall be proved to the satisfaction of the Commissioner of Internal Revenue, who shall certify the facts to the (First) Comptroller of the Treasury, that due diligence was used by the collector. And each collector shall also be credited with the amount of all property purchased by him for the use of the United States, provided he faithfully account for and pay over the proceeds thereof upon a resale of the same, as required by law. (Art. 247, ¶715, Reg. 33, Rev., Jan. 2, 1918.)

2541 **Credit to Collectors for Taxes Charges Against Them Which Are Uncollectible.**—[Read at ¶2558.] Collectors are entitled to credit for taxes assessed against parties who may have absconded or become insolvent prior to the day when the tax ought, according to the provisions of the law, to have been collected: *Provided*, That it shall be proved to the satisfaction of the Commissioner of Internal Revenue, who shall certify the fact to the Auditor for the Treasury Department, that due diligence was used by the collector.

2542 It should be borne in mind that, though credits allowed on account of insolvency or absconding release the collector from the obligation created by his receipt for the amount credited, the obligation to pay still remains upon the parties assessed. Collectors should therefore keep a record (No. 23) of all taxes thus credited and of the persons from whom they are due, and should enforce payment whenever it is in their power to do so.

2543 If a tax reported as uncollectible on account of the insolvency or absconding of the party owing it is paid after credit has been given for it, it should be returned upon Form 58. (Art. 248, ¶716–718, Reg. 33, Rev., Jan. 2, 1918.)

2544 **Preparation of Claims for Credit for Taxes and Assessed Penalties Alleged to be Uncollectible—Form 53.**—(Read at ¶2558.) When a tax is found to be uncollectible the collector or deputy collector who made the demand for payment and is conversant with the facts should prepare a claim on Form 53, showing the name and address of the party assessed, the article or occupation for and on account of which the assessment was made, the list, page, and line on which assessed, the amount claimed, the date of first demand, and the date when the tax was found to be uncollectible, and the cause of inability to collect. The amount or amounts claimed should be entered on the Form 53 under the respective column in which it or they are charged to the collector on Form 23. One or more claims, covering taxes of the same nature, may be entered upon one Form 53, and in cases where a tax and a penalty are both claimed to be uncollectible but one entry of the name, address, etc., should be made, but the amounts should be entered in their respective columns.

2545 Collectors are required to make demand within the time prescribed by law, and either to collect the taxes or prove them to be uncollectible, within six weeks after the receipt of the list, unless special reasons are furnished, such as lack of mail facilities, great extent of territory, etc., showing why they could not be collected within that time.

2546 Six months are allowed from the receipt of a list in which to close it up, either by collection or by presenting claims for abatement; but when an abatement of taxes alleged to be uncollectible is asked, it must be shown in the vouchers, by dates, or otherwise, that they could not have been collected at the time they first became due and payable according to law, not at any time since. Where dates can not be given, it should appear in each case that they were uncollectible before distraint was or could have been made.

2547 When it happens that a tax has been paid for which a claim on Form 53 has been filed and is pending, the collector should at once notify the department of such payment.

2548 When the claims have been thus prepared they should be carefully sealed up and mailed to the Commissioner of Internal Revenue, marked "Income Tax Division." Letters of transmittal should not be sent with claims unless they contain necessary explanations.

2549 The Form 53 should show when the tax first became due: whether the taxpayer had any property liable to distraint at that time or thereafter; and whether the collector used due diligence at all times to collect the tax.

2550 It is the duty of the collector to use the same diligence to collect a tax after it has been abated as uncollectible, or as in suit, as before abatement. Such an abatement does not impair the claim of the Government against the taxpayer. (Art. 249, ¶719-725, Reg. 33, Rev., Jan. 2, 1918.)

2551 **Taxes that Are or Have Been in Litigation.** [Read at ¶2558.]—No suit will be brought for the recovery of unpaid internal-revenue taxes until the collector of the district shall have submitted to the Commissioner of Internal Revenue a full report of all material facts and circumstances with the case, and shall have received from him express authority to report the case to the United States attorney for suit. (Art. 250, ¶726, Reg. 33, Rev., Jan. 2, 1918.)

2552 Amounts collected by distraint or otherwise, subsequent to the institution of the suit, should be at once reported to the United States attorney for his guidance in his further prosecution of the case in court. (Art. 251, ¶727, Reg. 33, Rev., Jan. 2, 1918.)

2553 Credit given the collector for taxes abated as uncollectible will not affect a suit pending for their recovery, nor will it relieve the collector from the duty of distraining any property of the taxpayer that may be found at any time before judgment. (Art. 252, ¶728, Reg. 33, Rev., Jan. 2, 1918.)

2554 When a suit for the recovery of a tax is decided in favor of the United States, and execution issued and returned *nulla bona*, as respects the whole or a part of the judgment, the collector should satisfy himself by careful inquiry, whether any personal property can be found to satisfy the judgment in whole or in part, and whether there is any real estate which can be subjected, by distraint or by suit in equity, under section 3207, Revised Statutes of the United States, to sale in satisfaction of the judgment; and if he should be fully satisfied that there is no such real or personal property, he should thereupon present to the Commissioner of Internal Revenue a claim, on Form 53, for the abatement of the amount which has not been and can not be collected, if it has not already been abated, making a statement thereon of his action, accompanied by a certificate of the clerk of the court as to the facts in the case. (Art. 253, ¶729, Reg. 33, Rev., Jan. 2, 1918.)

2555 When a suit for taxes not abated as uncollectible is dismissed upon a technical defeat in the proceedings, or when an adverse verdict is rendered on some technical ground not reaching the merits of the case, and the right to a new trial or to an appeal has lapsed, and the tax can not be collected by distraint or by suit in equity to subject real estate to sale, the claim for abatement of the taxes should be made on Form 53. (Art. 254, ¶730, Reg. 33, Rev., Jan. 2, 1918.)

2556 Collectors are authorized to pay the clerk of the court his legal fees for the certificates required by the regulations of this department furnished by him relative to litigated taxes, and will be credited in their expense accounts for the amounts so paid on filing therewith vouchers covering the expenses thus incurred. (See Regs. No. 2, p. 84.) (Art. 255, ¶731, Reg. 33, Rev., Jan. 2, 1918.)

2557 Where land is sold to satisfy assessments the amount realized, after deducting expenses of sale, should be credited to the lists, and the remainder, if uncollectible, claimed on Form 53. If land is bid in by the collector for the United States, the amount for which the same is purchased, after deducting expenses of sale, should be credited to the assessments under the limitations prescribed in Regulations No. 2, revised, and the remainder, if uncollectible, claimed on Form 53. (Art. 256, ¶732, Reg. 33, Rev., Jan. 2, 1918.)

2558 The following modifications in the procedure with regard to claims on Forms 46, 47, 53 and 488 are prescribed.

1. Claims on Form 46 and Form 47 will not hereafter be referred to division deputies
2559 for investigation, and the division deputy's certificate on page 2 of the claims need not be executed. Where an investigation is necessary it will be directed by the Commissioner to be made.

2. All claims on Forms 46 and 47 are to be stamped with the date of receipt imme-
2560 diately on presentation to the collector or division deputy, and thereafter are to be forwarded, without further recording or certification, immediately to the Commissioner. Two exceptions to this rule are to be especially noted.

(a) The certificate on page 2 of the claim is to be executed in the case of claims
2561 for taxes paid by special tax stamp, since there is no data in the Commissioner's office which will permit the verification of these claims without the collector's certificate.

(b) When a claim is filed for abatement such notation is to be made on the col-
2562 lector's assessment list on Form 23 as will the issuance of collection notices until after the abatement claim has been acted upon, unless, of course, the collector deems the interests of the Government insufficiently protected to justify suspension of the collection.

3. The use of Record 22 is to be abandoned. Record 23 will continue to be used,
2563 as at present.

4. Form 7213, notification of allowance of refunding claim, will no longer be for-
2564 warded to collectors.

5. Hereafter, where an abatement claim is acted upon, the collector will receive
2565 an original letter addressed to the claimant and a carbon copy for the collector's files. The original is to be mailed the claimant immediately with notice and demand for the payment of any tax shown by the letter and the assessment list to be due.

6. Where the claim is allowed in full, credit for the abated tax is not to be taken
2566 by the collector until the receipt of schedule on Form 3220. This schedule will be prepared and mailed to the collector monthly, as heretofore.

2567 7. Because of the distribution of the claims work to the various divisions of the Bureau, it is no longer practicable to consider a claim on Form 46 or 47, 53 or 488, covering taxes assessed upon more than one of the lists of the various classifications. In presenting their own claims on Forms 53 and 488, therefore, collectors will hereafter group in their claims the items which are upon the list, or lists, of a given class, and if a claimant makes claim on Form 46 or 47 for the remission or refund of taxes assessed upon more than one kind of list, the collector will assist the claimant in formulating new claims correctly prepared.

2568 Regulations 2, 14 and 33 (Art. 247-273) are modified accordingly.

The purposes of the modification of the former procedure with regard to claims 2569 are to eliminate a duplication of detail in the collector's and the Commissioner's office, and the accommodation of the taxpayer by making it possible for him to secure a much more prompt consideration of his claims than has been possible heretofore. (T. D. 2654, February 19, 1918.)

2570 **Authorizing Collectors in Certain Cases of Erroneous Assessment to Present Blanket claims Monthly on Form No. 47.**—Hereafter, collectors will present once a month a blanket claim on Form 47 for the abatement of taxes coming within the following classes of taxes erroneously assessed:

1. Duplicate assessments.
2. Cases where specific exemption has not been taken on the taxpayer's return and assessment has accordingly been excessive to the extent of the tax assessed because of failure to take exemption.
3. Cases of excessive assessment caused by mathematically erroneous calculations of tax by the taxpayer upon his return.
4. 50% additional taxes where a tentative return has been filed within the time required by law, but where the fact of such filing has been overlooked in the collector's office and an assessment of 50% additional tax has accordingly been made, and is unquestionably erroneous. In all other cases of 50% additional tax assessments, a claim must be presented by the taxpayer, as at present.

In preparing these claims, the collector will paste upon the blank space on Form 47 2571 a schedule showing the name and address of the taxpayers; the month, page, and line of the assessment list, amount assessed, amount due, amount abateable; the nature of the erroneous assessment, as classified above; and a brief and clear statement of the ground for abatement.

These claims should be forwarded so as to be received in the Commissioner's office 2572 by the 5th of the month, in order that the allowance may be scheduled on the Form 7220 for the same month.

2573 Where amounts abateable have been assessed upon lists of the different classes, 2574 separate claims must, of course, be presented, each to cover the items upon the list, or lists, of a given class. (T. D. 2698, April 16, 1918.)

2575 **Internal-Revenue Officers Forbidden to Furnish Unauthorized Statements or Certificates in Support of Claims for Remission of Taxes or Penalties Under Internal Revenue Law.**—The attention of this office has recently been called to voluntary written statements or certificates furnished by certain revenue officers in support of claims pending in this office for remission of taxes and penalties found to have been incurred by distillers or other taxpayers.

All such statements or certificates are not only wholly unauthorized, but in many 2576 instances are misleading and tend to defeat the Government's claim.

Revenue officers are therefore positively prohibited from furnishing statements 2577 in cases pending before this office unless called for by this office or required by regulations to be furnished in cases when originally presented to this office through the regular official channels.

In this connection attention is called to T. D. 1607 of March 1, 1910, forbidding 2578 revenue officers from preparing affidavits for claimants in like cases. Any violation of the instructions contained in that decision or herein contained will subject the offending officer to dismissal from the service, and, where the circumstances justify, to prosecution under Section 3169 of the Revised Statutes. (T. D. 2443, Feb. 9, 1917.)

2579 **Suits to Restrain Assessment or Collection of Taxes.**—"No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." (Section 3224, Revised Statutes.)

2580 The appended decision of the Supreme Court of the United States in the case of Dodge v. Osborn, Commissioner of Internal Revenue, is published for the information of internal-revenue officers and other concerned. (T. D. 2301, March 3, 1916.)

Decision.
(February 21, 1916.)
240 U. S. 118.

John F. Dodge and Horace E. Dodge, Appellants, v. William H. Osborn, Commissioner of Internal Revenue.

Appeal from the Court of Appeals of the District of Columbia.

Mr. Chief Justice White delivered the opinion of the Court.

2581 The appellants filed their bill in the Supreme Court of the District of Columbia against the Commissioner of Internal Revenue to enjoin the assessment and collection of the taxes imposed by the Income Tax section of the Tariff Act of October 3, 1913 (38 Stat. 166, 181) and especially the surtaxes therein provided for on the ground that the statute was void for repugnancy to the Constitution of the United States. The case is here on appeal from the judgment of the court below affirming the action of the trial court in sustaining a motion to dismiss the complaint for want of jurisdiction because the complainants had an adequate remedy at law and because of the provision of section 3224 Revised Statute that "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court."

We at once put out of view a contention that section 3224 [¶2579] is not applicable **2582** to taxes imposed by the Income Tax Law since we are clearly of the opinion that it is within the contemplation of paragraph L of the act which provides:

[¶1620.] "That all administrative, special and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this section, are hereby extended and made applicable to all the provisions of this section and to the tax herein imposed."

And for the same reason we do not further notice a contention as to the inapplica- **2583** bility of sections 3220, 3226 and 3227, to which effect was given by the court below requiring an appeal to the Commissioner of Internal Revenue after payment of a tax claimed to have been erroneously and illegally assessed and collected and upon his refusal to return the sum paid giving a right to sue for its recovery.

The question for decision therefore is whether the sections of the Revised Statutes **2584** referred to are controlling as to the case in hand. The plain purpose and scope of the sections are thus stated in Snyder v. Marks, 109 U. S. 189, 193–194, a suit brought to enjoin the collection of a revenue tax on tobacco:

"The inhibition of Section 3224 applies to all assessments of taxes, made under color of their offices, by internal revenue officers charged with general jurisdiction of the subject of assessing taxes against tobacco manufacturers. The remedy of a suit to recover back the tax after it is paid is provided by statute, and a suit to restrain its collection is forbidden. The remedy so given is exclusive, and no other remedy can be substituted for it. Cheatham v. United States, 92 U. S. 85, 88, and again in State Railroad Tax Cases, 92 U. S. 575, 613, it was said by this court that the system prescribed by the United States in regard to both customs duties and internal revenue taxes, of stringent measures, not judicial, to collect them, with appeals to specified tribunals, and suits to recover back moneys illegally exacted was a system of corrective justice intended to be complete, and enacted under the right belonging to the government to prescribe the conditions on which it would subject itself to the judgment of the courts in the collection of its revenues. In the exercise of that right, it declares, by Sec. 3224, that its officers shall not be enjoined from collecting the tax claimed to have been unjustly assessed, when those officers, in the course of general jurisdiction over the subject matter in question have made the assignment (assessment) and claim that it is valid."

And this doctrine has been repeatedly applied until it is no longer open to question **2585** that a suit may not be brought to enjoin the assessment or collection of a tax because of the alleged unconstitutionality of the statute imposing it, Sheldon v. Platt, 139 U. S. 591; Pittsburgh, etc., Ry. v. Board of Public Works, 172 U. S. 32; Pacific Whaling Company v. United States, 187 U. S. 447, 451, 452.

But it is contended that this doctrine has no application to a case where wholly **2586** independent of any claim of the constitutionality of the tax sought to be enjoined, additional equities sufficient to sustain jurisdiction are alleged, and this, it is asserted, being such a case, falls within the exception to the general rule. But conceding for argument's sake only the legal premise upon which the contention rests, we think the conclusion that this case falls within such exception is wholly without merit, since after an examination of the complaint we are of the opinion that no ground for equitable jurisdiction is alleged. It is true the complaint contains averments that unless the taxes are enjoined many suits by other persons will be brought for the recovery of the taxes paid by them, and also, that by reason of Section 3187 Rev. Stat. making the tax a lien on plaintiffs' property the assessment of the taxes would constitute a cloud on plaintiffs' title. But these allegations are wholly inadequate under the hypothesis which we have assumed solely for the sake of the argument, to sustain jurisdiction, since it is apparent

on their face they allege no ground for equitable relief independent of the mere complaint that the tax is illegal and unconstitutional and should not be enforced—allegations which if recognized as a basis for equitable jurisdiction would take every case where a tax was assailed because of its unconstitutionality out of the provisions of the statute and thus render it nugatory, while it is obvious that the statute plainly forbids the enjoining of a tax unless by some extraordinary and entirely exceptional circumstance its provisions are not applicable.

There is a contention that the provisions requiring an appeal to the Commissioner
2587 of Internal Revenue after payment of the taxes and giving a right to sue in case of his refusal to refund are wanting in due process and therefore there is jurisdiction. But we think it suffices to state that contention to demonstrate its entire want of merit.

2588 Affirmed. (240 U. S. 118.—T. D. 2301, March 3, 1916.)

2589 **No Suit to Enjoin Collection of Penalties Shall be Maintained in Any Court.**—In Kohlhamer vs. Smietanka, Collector (239 Fed. 408), it was held that while Section 3224 R. S. [Paragraph 2579] which prohibits suits to enjoin the collection of internal revenue taxes, does not specifically include "penalties" as such, yet where penalties are authorized by statute to be added to the tax and collected as a part of the tax, the court will hold that the penalty is a part of the tax, the assessment and collection of which are governed by Section 3224. (239 Fed. 408.)

2590 Law ¶437. **Abatement of Second Assessments, Refund of Taxes Collected on Such Assessments, and the Recovery by Suit of Taxes so Paid.**—"Sec. 1316. (b) Section 3225 of the Revised Statutes of the United States is hereby amended to read as follows:

'Sec. 3225. When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, or recovered by any suit, unless it is proved that such list, statement, or return was not willfully false or fraudulent and did not contain any willful understatement or undervaluation.'" [Effective as amended on the day after "the passage" of the Revenue Act of 1918, ¶2823. [See ¶2603.]

2591 Law ¶433. **The Commissioner Authorized to Make Rules and Regulations.**—"Sec. 1309. That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act."

2592 **Effective Date of Treasury Decisions.**—Treasury decisions promulgating rulings of the Internal Revenue Bureau become effective upon the date of approval unless otherwise stated therein. Cases previously adjusted in contravention of law as pronounced in such decisions, are subject to readjustment in accordance with the decision. (Art. 38, ¶245, Reg. 33, Rev., Jan. 2, 1918.)

2593 **Burden of Proof as to Fraud, etc., in Suits to Recover Taxes Collected Under Second Assessment Under Sec. 3225 Prior to Amendment.**—[Comment: Sec. 3225, Revised Statutes, as amended by the Revenue Act of 1916 read as follows:

"Sec. 3225. When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, no tax collected under such assessment shall be recovered by any suit unless it is proved that the said list, statement or return was not false nor fraudulent and did not contain any understatement or undervaluation; but this section shall not apply to statements or returns made or to be made in good faith under the laws of the United States regarding annual depreciation of oil and gas wells and mines."

T. D. 2661, the Camp Bird (Ltd.) case, and the Northwestern Mutual Life Insurance Company case, reported below at ¶2594 to ¶2612, refer to Sec. 3225 as it was prior to its amendment by the Revenue Act of 1916 and as it was amended by such Act. In giving consideration to Sec. 3225 as now again amended, ¶2590, the reader should note ¶2603.]

2594 **The Camp Bird (Ltd.) Case.**—The appended decision of the United States Circuit Court of Appeals for the Eighth Circuit, in the case of Camp Bird (Ltd.) *v.* Frank W. Howbert, collector of internal revenue, is published for the information of internal-revenue officers and others concerned. (T. D. 2661, March 5, 1918.)

1. SECTION 3225, REVISED STATUTES.

The plaintiff having understated in its original return the amount for which it was subject to tax is not entitled to recover any part of a second assessment paid, although the original return was made in good faith and without any intention to escape lawful tax.

2. AMENDMENT TO SECTION 3225, REVISED STATUTES.

The amendment to section 3225, Revised Statutes (sec. 14, act of Sept. 8, 1916), providing that it shall not apply to statements or returns made or to be made in good faith regarding annual depreciation of oil or gas wells and mines, does not purport to be retroactive in its operation.

3. JUDGMENT AFFIRMED.

The judgment of the United States District (T. D. 2366) is affirmed.

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.

(249 Fed. 27)

Camp Bird (Ltd.), a corporation, plaintiff in error, v. Frank W. Howbert, as collector of internal revenue within and for the district of Colorado, defendant in error.

In error to the District Court of the United States for the district of Colorado.

Before CARLAND, Circuit Judge, and AMIDON and MUNGEL, District Judges.

MUNGEL, District Judge, delivered the opinion of the court:

This action was brought by plaintiff in error, hereafter called plaintiff, against
2595 defendant in error, as collector of internal revenue of the United States for the district of Colorado, hereafter called defendant. The object of the action was to recover sums of money that plaintiff had paid to defendant as an internal-revenue tax. A jury was waived and the trial court entered judgment upon special findings of facts, dismissing plaintiff's action.

Briefly stated, the court found that the plaintiff was the owner of valuable and pro-
2596 ductive mining property in Colorado, after the year 1902, and that it made a return for each of the years 1909, 1910 and 1911 to the collector of internal revenue, purporting to set forth its income for each of those years, under the provisions of the act of Congress approved August 5, 1909 (36 Stat. 112), relating to an excise tax on corporations. In these returns the plaintiff stated the items of charge and credit and the net annual income which it considered subject to the tax. The Commissioner of Internal Revenue found that deductions claimed in each of these returns had been overstated, and that the amount subject to the tax had been understated, and made additional assessments against the plaintiff and notified it of his action. The plaintiff, under protest, paid the additional taxes levied. An application to the Commissioner of Internal Revenue for an abatement of the additional tax was denied by the commissioner, and this action was then begun. While the court found that the plaintiff had understated its net income upon which it was required to pay the excise tax, it was further found that the understatement was not made fraudulently, knowingly, willfully, nor for the purpose of defrauding the United States, but was made in good faith, and with the belief that the figures presented stated the facts. The only question in the case is whether the judgment is supported by these findings.

Section 3225 of the Revised Statutes as it existed at the time these taxes were
2597 levied and collected was as follows:

When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, no taxes collected under such assessment shall be recovered by any suit, unless it is proved that the said list, statement, or return was not false nor fraudulent, and did not contain any understatement or undervaluation.

It is contended that this section was meant to be applied only to those who inten-
2598 tionally made false statements or undervaluations, because when this act was passed an accurate statement of the facts required in returns by taxpayers could be made, whereas returns under the corporation tax law necessarily must be estimates.

By the acts of Congress approved June 30, 1864 (13 Stat., 223), as amended and
2599 supplemented by the acts of Congress of March 3, 1865 (13 Stat., 469), of July 13, 1866 (14 Stat., 98), and March 2, 1867 (14 Stat., 471), a general system of internal revenue was provided to meet the financial burdens imposed by the Civil War. Taxes were imposed generally upon property, occupations, industries, and incomes. Many classes of persons subject to taxation were required to make sworn lists or returns of property subject to the tax. The values of property were to be reported and amounts of net income, and the accurate statement of many of the items required were quite as difficult as the ascertainment of the required items under the present corporation tax. Section 14 gave the assessor power to summon a declarant and to examine him and his books, if in his opinion the return was either false or fraudulent or contained any understatement or undervaluation. If the return was false or fraudulent, the assessor was required to increase

the tax by 100 per cent. An unexcused neglect or refusal to make or to verify a list was penalized by the addition of 50 per cent to the tax. By section 20 the assessor was empowered to fix the amount of additional tax to be paid, when there had been an omission, understatement, undervaluation, or false or fraudulent statement. Section 44 authorized the Commissioner of Internal Revenue to refund excessive taxes collected and to repay to collectors amounts recovered in court against them for taxes collected by them, but provided that no taxes should be recovered, refunded, or paid back, where a second assessment had been made because the first list had been, in the opinion of the assessor, either false, fraudulent, or contained any understatement or undervaluation, unless it was proved that the return was not false or fraudulent, or did not contain any understatement or undervaluation. The substance of these enactments has continued in force ever since. (See Rev. Stats., secs. 3173, 3176, 3182, 3220, 3225; U. S. Comp. Stats. Ann., secs. 5896, 5899, 5904, 5944, 5948.) They evince a discriminating use of terms as between false and fraudulent returns and those that contain only an understatement or valuation, and provided remedies and penalties apportioned to the several delinquencies. The mere undervaluation or understatement in a return is made a basis for summoning the delinquent to appear and be examined and a basis also for imposing an additional assessment, and prevents the Commissioner of Internal Revenue from making a refund or remission of taxes. The further provision found in section 3225 of the Revised Statutes, denying recovery by suit of any tax imposed under a second assessment, because in the opinion of the collector or his deputy, the former return was false or fraudulent or contained an understatement or undervaluation, unless it is proved that the prior list was not false nor fraudulent nor contained any understatement nor undervaluation, is in harmony with these provisions, and manifests the intention of Congress that no recovery may be had although the undervaluation or understatement was made unintentionally. See Bergdoll vs. Pollock (95 U. S., 337).

The proposition is advanced that this construction of section 3225 renders it vio-
2600 lative of the Constitution, as it would result in the confiscation of the plaintiff's property. It is well settled that "this corporation tax act imposed an excise tax and the only limitation on the power of Congress in the imposition of excise taxes is that they shall be uniform throughout the United States." United States vs. Singer (15 Wall., 111, 121); Pacific Insurance Co. vs. Soule (7 Wall., 433, 446). By this a geographical uniformity is meant. Flint vs Stone Tracy Co. (220 U. S. 107). The provisions laying an additional tax proportionate to the property omitted from the list on all who make any understatement or undervaluation operates uniformly on all of that class of persons wherever found and hence was within the power of Congress. The refusal of a right of action to recover such taxes, unless proof is made that there was no understatement or undervaluation is likewise within the scope of the legislative power. It is claimed that "section 3225, Revised Statutes, does not apply to the suit for the recovery of taxes collected under the corporation tax of 1909. This section applies to internal revenue taxes generally" and the corporation tax is one embraced in that class. In addition the corporation tax law contained a clause as follows (p. 951 Supp. to U. S. Comp. Stats., 1911):

All laws relating to the collection, remission, and refund of internal-revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

We think that section 3225, Revised Statutes, is a part of the laws relating to the
2601 refund of internal-revenue taxes, as section 3220, Revised Statutes, provides that the Commissioner of Internal Revenue is authorized to refund to the collector any amount that may be recovered against him in any court for any internal taxes collected by him.

Plaintiff also contends that the judgment is erroneous, because after final judgment
2602 was entered in this case Congress enacted an amendment to section 3225, Revised Statutes, which reads (p. 6984, 6 U. S. Comp. Stats., Ann.); "* * * But this section shall not apply to statements or returns made or to be made in good faith under the laws of the United States regarding annual depreciation of oil or gas wells and mines."

This statute does not purport to be retroactive in its operation and hence can not
2603 affect the judgment in this case. This disposes of all questions that require consideration.

2604 The judgment will be affirmed. (249 Fed. 27.) (T. D. 2661, March 5, 1918.)

2605 **The Northwestern Mutual Life Insurance Company Case** (248 Fed. 568).—[Comment: The following is extracted from Judge Geiger's opinion in this case in which judgment was rendered for plaintiff, and reproduced here because of the importance of the fundamental question discussed.]

* * * * * * * * * * * *

2606 A final question, one not suggested in the pleadings, briefly referred to in oral argument, but later elaborately discussed in briefs, arises on these facts: In making its return for the year 1910, plaintiff omitted an item of $77,000 from the income side. It is an aggregate of receipts from agencies, omitted because information respecting the accounts to which individual items were distributable was not at hand at the time of making the return, and, apparently, was in good faith treated as a "suspense" item which would naturally, upon later ascertainment, go into the return for the ensuing year. There is no suggestion that the facts are not consistent with perfect good faith. The record attests fully that the omission, if it involved delinquency at all, arose as stated—it was an erroneous failure to include the items.

The government urges that such failure bars the right to maintain the action,
2607 and bases its contention upon section 3225, R. S. U. S. (Comp. St. 1916, Sec. 5948), which is asserted to be incorporated into the excise law in question:

"When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or any deputy collector was false or fraudulent, or contained any understatement or undervaluation, no tax collected under such assessment shall be recovered by any suit unless it is proved that the said list, statement, or return was not false nor fraudulent, and did not contain any understatement or undervaluation."

The broad proposition is that any and every error of understatement or under-
2608 valuation, howsoever innocently made, bars relief against a reassessment, howsoever inaccurate, or unjust it may be. It may be said, confidently, that so drastic a rule should not be accepted unless unmistakably clear language, disclosing a legislative purpose and intent viewed in the light of history and results to be achieved, leaves no alternative.

I shall assume that section 3225 is brought into the tax law in question; and it
2609 necessitates consideration of that section as part of a chapter, dealing generally with practice, procedure, rights and remedies awarded to both government and taxpayer or citizen, in the matter of assessment, collection, remission, and refund of public dues. These laws are not of recent enactment. The times and conditions at and under which they came into being to further the raising of revenue to meet a situation of great national stress, the administrative recognition and application accorded them for over fifty years, may safely aid in throwing light upon the just interpretation to be given. Without narrating historically the advent and amendment of this particular section 3225 and allied provisos, it suffices to say that they had their beginnings in the Civil War Revenue Act of June 30, 1864 (13 U. S. Stat. p. 223, c. 173), as amended by the Act of July 13, 1866 (14 U. S. Stat. 98, c. 184). They exhibit the early recognition by the government of the necessity of ways and means for revising, both in the interest of the government and the taxpayer, the returns or assessments made or levied, and for refunding or recovery of taxes actually paid; and from the earliest occasions when interpretation of these statutes was called for the courts here have uniformly given to the results accomplished by legislation on the general subject, this broad characterization:

"The revenue measures of every civilized government constitute a system which provides for its enforcement by officers commissioned for that purpose. In this country, the system for each state, or for the federal government, provides safeguards of its own against mistake, injustice, or oppression, in the administration of its revenue laws. Such appeals are allowed to specified tribunals as the lawmakers deem expedient. Such remedies, also, for recovering back taxes illegally exacted, as may seem wise are provided. In these respects, the United States have, as was said by the court in Nichols v. United States, 7 Wall. 122 [19 L. Ed. 125], enacted a system of corrective justice, as well as a system of taxation in both its customs and internal revenue branches. That system is intended to be complete. * * * So also in the internal revenue department, the statute allows appeals from the assessor to the Commissioner of Internal Revenue; and, if dissatisfied with his decision, on paying the tax the party can sue the collector; and if the money was wrongfully exacted, the courts will give him relief by a judgment, which the United States pledges herself to pay." Per Miller, Justice, Cheatham v. U. S., 92 U. S. 88, 23 L. Ed. 561.

A careful reading of adjudicated cases—indeed, all legislation upon the varied
2610 phases of public revenue—suggests that at no time has there been a purpose to cut off or to impair, either as against the government or the citizen, this "system of corrective justice" attending the administration of revenue laws.

At the outset, the proposition advanced by the defense is repugnant, utterly,
2611 to this view, and the broad purpose disclosed. If it is not obviously, it is easily demonstrably so. A few considerations of a practical nature—which a court may entertain—will be helpful. When property is assessed for taxation upon an ad valorem basis, the taxing officers frequently must, initially, determine values. Even in such cases, the taxpayer is not left wholly remediless to review or revise the finding of the assessing or taxing officer. In very rare situations is it possible, justly, to ascribe to any individual, whether he be the interested taxpayer or the public assessor, the power or the duty to make an initial valuation to be accepted by the one adversely interested, as indubitably fair; and, as indicated, there have arisen of necessity, in the interest of just dealing, the varying methods of revision and correction. Coming to the particular case before us, where assessments are based upon returns exhibiting great magnitude and complexity of business operations, the possibility and the probability of errors—without a suggestion of attendant bad faith—is increasingly present. It may safely be said that the great majority of returns under these excise and income tax laws contain items involving for their fixing and determination, judgment, honestly and conscientiously exercised; and it is equally true that, no matter how conscientiously one man may fix and determine an item, another, with equal probity and integrity, may fix it at a substantially higher or lower figure. The very purpose is to enable revision, to correct the mistake, of omission or commission, or to prevent frauds; and it would be anomalous to assume infallibility on the part of the government in its efforts at revision, wherefore mistakes of the citizens only are to be corrected. This is said because, in my judgment, the drastic construction of section 3225, now insisted upon, will, if adopted, lead to that result as a matter of practical administration and application. It means that the taxpayer cannot prevail unless he succeeds in reinstating his own return, item for item, against the revision or reassessment. Naturally, suits to recover can rarely be brought when the reassessment is more favorable than the original return, though even such result can conceivably come through an entire rearrangement of the return through the exclusion of items admitted and the inclusion of items contested by the taxpayer. But this is true as a practical matter: Every reassessment, which results in an increased tax, must involve, expressly or by necessary implication, the opinion or conviction of the reviewing officer that the original return contained, somewhere or somehow, an understatement or undervaluation, a false (erroneous, or fraudulent) item or items. Therefore, unless the taxpayer can establish that his original return was right, and hence that the reassessment, in its attempted revision or additions, is wrong, in every particular, he must fail in his action. If this is possible, and it must follow so strict an interpretation of the statute (section 3225), then there is little left that can commend itself—to the citizen or taxpayer—of any so-called system of "corrective justice."

The present case furnishes a good illustration: Assuming that the exaction of 1
2612 per cent. on the millions of dividends treated as income is illegal and unjust, a remedy would have to be denied because of an honest error respecting an item, by comparison, trifling. I am unwilling to give to the section in question any such interpretation; and, no matter how drastic an application may be compelled in cases of actual fraud—whether the items fraudulently withheld or misstated be large or small—the view that the section aims to furnish a rule of proof, to give to the finding of executive officers a status or dignity prima facie good, to cast upon the citizen the burden of overthrowing it, thereby giving the section a distinct place and function in the corrective and revisory "system" of the revenue law, is far more reasonable and commendable. It furthers the accomplishment, by the government or by the taxpayer, of the general purpose of enabling just revision or recovery; whereas, the view urged by the defendant makes the statute highly penal, and, in its application, one-sided, resulting, as indicated, in foreclosure of recovery in every case where the original return cannot be established, item for item, in opposition to the government revision. (Northwestern Mut. Life Ins. Co. vs. Fink, Collector, District Court, E. D. Wisconsin, Nov. 7, 1917—248 Fed. 568.)

2613 **Suit for Recovery of Taxes Wrongfully Collected.**—No suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal [¶2526] shall have been duly made to the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein: PROVIDED, That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought, without first having a decision of the Commissioner at any time within the period limited in the next section." (Section 3226, Revised Statutes.)

2614 **Limitation as to Suits for Recovery of Taxes Wrongfully Collected.**—"No suit or proceeding for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without

authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court unlesss the same is brought within two years next after the cause of action accrued: PROVIDED, That actions for such claims which accrued prior to June six, eighteen hundred and seventy-two, may be brought within one year from said date; and that where any such claim was pending before the Commissioner, as provided in the preceding section, an action thereon may be brought within one year after such decision and not after. But no right of action which was already barred by any statute on the said date shall be revived by this section." (Section 3227, Revised Statutes.)

2615 **Limitation on Claims for Refunding Other Than Those Based on an Examination of a Return of Income.**—"All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued: PROVIDED, That claims which accrued prior to June six, eighteen hundred and seventy-two, may be presented to the Commissioner at any time within one year from said date. But nothing in this section shall be construed to revive any right of action which was already barred by any statute on that date." (Section 3228, Revised Statutes.) [Read at ¶2488.]

2616 We now come to the taxes of 1909 and 1910. The 1909 tax was paid June 28, 1910, but claim for refund was not filed until June 10, 1913, nearly three years thereafter. The 1910 tax was paid June 8, 1911, but claim for refund was not filed until June 10, 1913, two years and one day (excluding Sunday, June 8, 1913) thereafter. The relevant sections of the United States Revised Statutes are as follows: [¶2613, ¶2614 and ¶2615 above].

2617 Sections 3226, 3227 and 3228 of the Revised Statutes (Comp. St. 1913, Sections 5949-5951) must be read together, and, when so read, provide a simple and orderly system where by an aggrieved taxpayer may sue to recover taxes wrongfully collected.

2618 In the first place, under section 3226, no suit can be maintained unless the taxpayer appeals to the Commissioner of Internal Revenue. This appeal under section 3228 must be presented to the Commissioner of Internal Revenue within two years after the cause of action accrued. Under section 3227 no suit can be maintained unless brought within two years next after the cause of action accrued. Under section 3228 the accrual of the cause of action is at the date when the tax is illegally assessed or collected. Obviously the wrongful act was done when the United States, acting in this instance through the Collector, received the money in payment of the tax. Under section 3227, the date of accrual is the date when the Commissioner of Internal Revenue decides adversely to the taxpayer. Of course, under that section the taxpayer need not wait longer than six months in the event that the Commissioner delays his decision.

2619 To illustrate, therefore, with the precise facts in the case at bar: On June 28, 1910, the Mail Company paid the Collector the tax for the year 1909. The appeal to the Commissioner of Internal Revenue should have been made on or before June 28, 1912, but was not made until June 10, 1913. On June 8, 1911, the Mail Company paid the Collector for the tax for the year 1910. The appeal to the Commissioner of Internal Revenue should have been made on or prior to June 8, 1913, but was not made until two days later, to wit, June 10, 1913. Thus the condition precedent with which it was necessary to comply before the Mail Company could maintain a suit was not complied with, and no cause of action ever accrued for the years 1909 and 1910 in favor of the Mail Company against the Collector.

2620 If, to illustrate, an appeal in those cases had been presented to the Commissioner of Internal Revenue within two years, say on or before June 8, 1912, and on or before June 9, 1913 (June 8, 1913, being a Sunday) respectively, then the Mail Company under section 3227 would have been in time if suit had been commenced on or before June 8, 1914, and June 8, 1915, respectively. Merck v. Treat, 174 Fed. 388, 98 C. C. A. 506. * * * . (Mail & Newspaper Transportation Co., et al., v. Anderson, Collector, Circuit Court of Appeals, Second Circuit, New York. April 11, 1916.—234 Fed. 590.)

2621 **Conditions Precedent to Suit Which the Law Requires.**—[Comment: The following example of procedure, with the Court's comment thereon, is taken from Gulf Oil Corporation v. Lewellyn in the lower court (242 Fed. 709.) (Reversed by Circuit Court of Appeals, 245 Fed. 1. Decision of Circuit Court reversed by U. S. Supreme Court, December 9, 1918.).]

2622 From the evidence produced at the trial, the Court has found the following:

FACTS.

2623 FIRST. * * * .

SECOND. The Gulf Oil Corporation, on the 14th day of February, 1914, in
2624 compliance with the provisions of the Act of Congress of October 3, 1913, made a return of its annual net income for the twelve months ending December 31, 1913, as required by said Act. In making said return the Gulf Oil Corporation certified that it had not included in the statement of gross income for the year 1913 certain dividends amounting to $11,424,440 received by it from subsidiary companies out of earnings and surplus of said subsidiary companies accrued prior to January 1, 1913.

THIRD. In said return the Gulf Oil Corporation showed net income for the twelve
2625 months ending December 31, 1913, of $886,250.44, but under date of May 1, 1914, the said C. G. Lewellyn, Collector, mailed to said corporation notice of an assessment of tax thereon amounting to $9,072.56. A claim for abatement of this overcharge, amounting to $210.06 was filed with the Collector June 9, 1914, and on June 30, 1914, the Gulf Oil Corporation paid to the said C. G. Lewellyn, Collector, the sum of $8,862.50, being the amount of said assessment, less the $210.06 for which abatement was claimed. Said claim for abatement having been disallowed, said Gulf Oil Corporation, on the 5th day of November, 1914, paid the said Collector the additional sum of $210.06, with interest amounting to $6.30, making a total payment of $216.36.

FOURTH. On the 30th day of December, 1914, the said C. G. Lewellyn, Collector,
2626 acting under instructions from the Commissioner of Internal Revenue at Washington, D. C., mailed notice and demand for tax assessment against the Gulf Oil Corporation for the year ending December 31, 1913, amounting to $114,034.34. In fact, this additional assessment amounted to $114,244.40, being the 1% upon the entire amount of the dividends received by the Gulf Oil Corporation from subsidiary companies out of surplus accrued to such subsidiaries prior to January 1, 1913, and payable to the Gulf Oil Corporation prior to March 1, 1913, and said additional assessment was based solely on said dividends. In making the assessment, however, the Commissioner of Internal Revenue reconsidered and allowed the previous claim for abatement of $210.06, erroneously assessed against the corporation in the original assessment, and credited the same as having been paid upon the assessment of December 30, 1913, leaving the net balance of such assessment $114,034.34 as stated.

FIFTH. The notice and demand of the said C. G. Lewellyn, Collector, for the
2627 payment of this additional tax recited that if the tax is not paid on or before January 8, 1915, it would be the duty of the Collector to collect said tax, together with 5% additional and interest at the rate of 1% per month until paid.

SIXTH. That subsequently the plaintiff filed with the defendant for presentation
2628 to the Commissioner of Internal Revenue a claim for the abatement of said income tax amounting to $114,034.34, a copy of which claim is attached to and made a part of plaintiff's Statement as Exhibit A. That after an examination of said claim for abatement the Commissioner of Internal Revenue rejected the same.

SEVENTH. On February 17, 1915, the said Gulf Oil Corporation paid to the said
2629 C. G. Lewellyn, Collector, said additional income taxes assessed for the period ending December 31, 1913, in the sum of $114,034.34, and at the same time filed said C. G. Lewelly a written protest, a copy of which protest is attached to and made a part of plaintiff's Statement as Exhibit B.

2630 EIGHTH. That subsequently the plaintiff filed with the said C. G. Lewellyn for presentation to the Commissioner of Internal Revenue a claim for the refund of the net amount of the assessment of said income tax, to wit: $114,034.34, and also the amount of the credit allowed thereon of $210.06, representing an over assessment against the corporation on the basis of its return as originally filed, the two amounts constituting the entire amount of the assessment in the sum of $114,244.40. A copy of the said claim for refund is attached to and a part of plaintiff's Statement as Exhibit C.

NINTH. That after consideration of said claim for refund, the Commissioner of
2631 Internal Revenue rejected the same, and the said C. G. Lewellyn was instructed to notify the Gulf Oil Corporation, and on or about April 13, 1915, did so notify said corporation, that said claim was rejected a copy of which notice is attached to and made a part of plaintiff's statement as Exhibit D.

* * * * * * * * * * * *

2632 The payment of all taxes hitherto required of the several subsidiaries by acts of Congress, and the full disclosure by the plaintiff in its return for 1913 of the dividends from its subsidiaries negative any suggestion that the conduct of the plaintiff has been in any way evasive or otherwise improper. The plaintiff has merely asserted its legal rights. Its rights to bring this action is clear because it has performed all the conditions precedent to suit which the law requires. * * * (242 Fed. 709.)

2633 **A Suit for Recovery of Taxes Erroneously or Illegally Assessed Can be Brought Against the Collector only Who Collected the Taxes, and not His Successor.**—The appended decision (236 Fed. 604) of the United States District Court for the Southern District of New York, in the case of Duncan I. Roberts v. John Z. Lowe, Jr., collector, is published for the information of internal revenue officers and others concerned.

[Summary: A suit to recover back taxes can not be maintained against the successor
2634 to the collector to whom the taxes were paid, except in his individual capacity.

The remedy lies either in an action against the collector who actually received the taxes or in an action against the United States.] (T. D. 2394, Nov. 14, 1916.)

2635 The appended decision of the United States Circuit Court of Appeals for the Third Circuit in the case of Philadelphia, Harrisburg & Pittsburgh Railroad Company to use, etc., v. Ephriam Lederer, collector of internal revenue, is published for the information of internal-revenue officers and others concerned.

Before Buffington, McPherson, and Wooley, Circuit Judges.

The satisfactory opinion of Judge Thompson (239 Fed., 184) relieves us from
2636 discussing nearly all the questions raised by this writ of error. We concede the force of the company's argument that in substance, and especially in practical effect, suits such as this are against the collector as an official rather than as an individual —his personal liability is rarely if ever enforced—and it may be that Congress might with safety and propriety extend the existing law to cover the situation now presented. But until the change be actually made we are bound by the law as it stands, and we see no reason to doubt that the statutes and decisions now in force prevent the company from recovering in this action for the taxes collected by William McCoach, the defendant's predecessor in office. No suit to recover them has been brought against McCoach, and for this reason the act of 1899 does not apply.

We need hardly say that without statutory permission no suit to recover a Federal
2637 tax can be maintained. Moreover the statutes on this subject must be strictly obeyed; they lay down the conditions and limitations under which the sovereign consents to be sued, and this consent should not be enlarged by construction. We turn for a few moments to the act of 1899, since this seems to be the company's principal reliance. Some additional facts should first be stated in order to make the position clear. The company paid the tax for 1909 in June, 1910, the tax for 1910 in June, 1911, and the tax for 1911 in June 1912. These taxes were paid under protest to McCoach, who remained in office until October 7, 1913, During his term, namely, in June, 1912, January, 1913, and May, 1913, respectively, the company claimed the refund of these three taxes; and in June, 1913, it also presented a petition to abate the tax of 1912 apparently on the ground that penalties had been incurred in addition to the tax, although we do not precisely know what abatement was asked for. The claim for the refund of the tax for 1909 was rejected by the Commissioner of Internal Revenue on July 15, 1912, but apparently the subsequent claims for refund of the taxes of 1910 and 1911 and also the petition for abatement in connection with the tax for 1912 were not disposed of until February, 1914.

On October 22, 1913, after McCoach had retired from office, the company filed
2638 a supplemental affidavit with the commissioner in support of its petition to abate the tax of 1912, and on the same day asked him to reopen and reconsider his refusal to refund the tax of 1909. On October 27, 1913, this request to reopen was granted, and at the same time the commissioner asked for additional information and affidavits in reference to the claims for the refund of the taxes for 1909, 1910, and 1911, and also in reference to the petition to abate the tax of 1912. Accordingly, an affidavit was furnished on January 14, 1914. In February, 1914, the petition for abatement was refused, and apparently at the same time the claims for the refund of the taxes for 1909, 1910, and 1911 were also refused, for on February 13, 1914, Lederer notified the company that these claims, and also the petition for abatement, had been examined and rejected by the commissioner. In March, 1914, a claim to refund the tax for 1913 was presented, and was refused soon afterwards. The present suit was brought on June 29, 1914, and sought to recover from Lederer the taxes for the four years.

From these acts it seems clear to us that the act of 1899 does not apply. The
2639 act is as follows:

> No suit, action, or other proceeding, lawfully commenced by or against the head of any department or Bureau or other officer of the United States in his official capacity or in relation to the discharge of his official duties, shall abate by reason of his death, or the expiration of his term of office, or his retirement, or resignation or removal from office; but, in such event the court, on motion or supplemental petition filed, at any time within twelve months thereafter, showing a necessity for the survival thereof, to obtain a settlement of the questions involved, may allow the same to be maintained by or against his successor in office, and the court may make such order as shall be equitable for the payment of costs.

The only "suit, action, or other proceeding" that could have been begun against
2640 McCoach while he was in office would have been a suit for the taxes of 1909 and 1910, but no such suit was brought, and it can not be successfully contended that a mere claim for refund, which is a matter wholly for the commissioner is a suit proceeding against the collector. The basis of an action against the collector is his receipt of the tax, and if he has not received it we do not see how he can be called on to pay it back. And the fact that Lederer was the channel by which the commissioner transmitted the refusal to refund did not impose liability. Lederer was liable, if at all, for the tax of 1912, for this had come into his own hands, but no statute made him liable for the money that was collected by his predecessor but had never been sued for.

For these reasons, and for those to be found in Judge Thompson's opinion, the
2641 judgment is affirmed. (242 Fed. 492.) (T. D. 2507, July 2, 1917.)

2642 **Protection to Collector from Personal Liability as result of Suit.—Section 989, Revised Statutes.**—When a recovery is had in any suit or proceeding against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid to him, and by him paid into the Treasury, in the performance of his official duty, and the court certifies that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector or other officer; but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury.

In view of the foregoing provisions protecting the collector from personal liability
2643 in case the court certifies that there was probable cause for the act done by him, it will be observed that it is for the interest of the collector to see that in all cases where judgment is rendered against him the court shall be asked to give the certificate of probable cause.

If the judgment debtor shall have already paid the amount recovered against him,
2644 the claim should be made in his name, and the affidavit should state the exact amount paid by him. There should also be a certificate of the clerk of the court in which the judgment was recovered (or other satisfactory evidence), showing that the judgment has been satisfied, and specifying the exact sum paid in its satisfaction, with a detail of all items of cost paid, or for which the judgment debtor is liable. (Act. 275, ¶773-775, Reg. 33, Rev., Jan. 2, 1918.)

2645 Law ¶441. **Specific Information Relative to Taxpayers' Affairs, Disclosed by Returns or Otherwise, not to be Divulged.**—[Sec. 1317 of the Revenue Act of 1918 amends Sec. 3167, Revised Statutes, to read as follows]:

"Sec. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment."

2646 The attention of collectors of internal revenue, internal-revenue agents, and other officers concerned is invited to section 3167 of the United States Revised Statutes, which prohibits the disclosure of information contained in income and other returns of internal-revenue taxpayers.

All internal-revenue officers will preserve as inviolably confidential all income
2647 tax returns, as the slightest infraction of law upon this subject will be severely punished. (T. D. 1962, March 20, 1914.)

2648 **Disclosure of Return—Penalty.**—The disclosure by a collector, deputy collector, agent, clerk, or other officer or employee of the United States, to any person not legally authorized to receive the same, of any information whatever contained in or set forth by any return of annual net income made pursuant to this act, is, by the act, made a misdemeanor, and is punishable by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both, in the discretion of the court, and if the offender is an officer or employee of the United States he shall be dismissed and be incapable thereafter of holding any office under the United States Government. (Art. 229, ¶651, Reg. 33, Rev., Jan. 2, 1918.)

2649 **Secrecy Applies Equally to Information on Returns of Income Withheld at the Source.**—The income-tax law is specific and mandatory in the matter of safe guarding from publicity the information acquired by reason of its requirements relative to annual returns of income. * * *

2650 The law does not provide for supplying corporations with a list of their bondholders drawn from withholding returns of income. (T. D. 2135, Jan. 23, 1915.)

Annual Return of Corporation May be Examined by Stockholders of Record Owning One per Centum or More of Outstanding Stock.—[Read at ¶1639.]

2651 Law ¶439. **Duty of Collector to Report Violations of Law.**—[Sec. 1317 of the Revenue Act of 1918 amends Sec. 3164, Revised Statutes, to read as follows]: "Sec. 3164. It shall be the duty of every collector of internal revenue having knowledge of any willful violation of any law of the United States relating to the revenue, within thirty days after coming into possession of such knowledge, to file with the district attorney of the district in which any fine, penalty, or forfeiture may be incurred, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses, setting forth the provisions of law believed to be so violated on which reliance may be had for condemnation or conviction."

2652 Law ¶423. **The "Advisory Tax Board."**—"Sec. 1301. (a) * * (b) * * (c) * * (d) (1) There is hereby created a board to be known as the "Advisory Tax Board," hereinafter called the Board, and to be composed of not to exceed six members to be appointed by the Commissioner with the approval of the Secretary. The Board shall cease to exist at the expiration of two years after the passage of this Act, or at such earlier time as the Commissioner with the approval of the Secretary may designate."

2653 Law ¶424. "Vacancies in the membership of the Board shall be filled in the same manner as an original appointment. Any member shall be subject to removal by the Commissioner with the approval of the Secretary. The Commissioner with the approval of the Secretary shall designate the chairman of the Board. Each member shall receive an annual salary of $9,000, payable monthly, together with actual necessary expenses when absent from the District of Columbia on official business."

2654 Law ¶425. "(2) The Commissioner may, and on the request of any taxpayer directly interested shall, submit to the Board any question relating to the interpretation or administration of the income, war-profits or excess-profits tax laws, and the Board shall report its findings and recommendations to the Commissioner."

2655 Law ¶426. "(3) The Board shall have its office in the Bureau of Internal Revenue in the District of Columbia. The expenses and salaries of members of the Board shall be audited, allowed, and paid out of appropriations for collecting internal revenue, in the same manner as expenses and salaries of employees of the Bureau of Internal Revenue are audited, allowed, and paid."

2656 Law ¶427. "(4) The Board shall have the power to summon witnesses, take testimony, administer oaths, and to require any person to produce books, papers, documents, or other data relating to any matter under investigation by the Board. Any member of the Board may sign subpoenas and members and employees of the Bureau of Internal Revenue designated to assist the Board, when authorized by the Board, may administer oaths, examine witnesses, take testimony and receive evidence." [Effective on the day after "the passage" of the Revenue Act of 1918, ¶2823.]

[In connection with the above read at ¶3124.]

2657 Law ¶428. **Leaves of Absence for Internal-Revenue Officers.**—"Sec. 1302. That all internal-revenue agents and inspectors shall be granted leave of absence with pay, which shall not be cumulative, not to exceed thirty days in any calendar year, under such regulations as the Commissioner, with the approval of the Secretary, may prescribe."

2658 Under the provisions of section 413 [¶2657 above] the following regulations are prescribed:

2659 (1) Applications for leave of absence should be in writing, or by telegraph or telephone if the emergency of the case so requires, and such applications should be approved by the revenue agent under whom the agent or inspector is assigned to duty. Agents in charge of divisions will make application for leave of absence direct to this office.

(2) All leave of absence is subject to the approval of the Commissioner of Internal

2660 Revenue.

(3) Charges incurred on account of telegrams or telephone messages incident
2661 to procuring leave will be at the expense of the officer desiring the leave.
(4) Leave of absence is reckoned by the calendar year and is not cumulative; that
2662 is, the leave applying to one calendar year can not accrue and be taken in a subsequent calendar year.
2663 (5) An agent or inspector in the service on January 1 and serving under a permanent appointment may be granted leave of absence not to exceed 30 days any time thereafter in the calendar year if the application is approved by the Commissioner of Internal Revenue.
(6) Leave is reckoned at the rate of 2½ days per month, and if an agent or inspector
2664 entered the service under permanent appointment on March 1, he would be entitled to only 25 days' leave for the balance of the calendar year, or if service began on November 1, he would be entitled to only 5 days' leave of absence.
(7) Sundays and legal holidays occurring within the period leave is taken should be
2665 considered and counted as days on leave.
(8) Leave taken in this calendar year, under the provisions of section 413, must
2666 be subsequent to September 8, 1916, the date of approval of the act. (T. D. 2369, Sept. 12, 1916.)

2667 Law ¶465. **Invalidating Clause.**—"Sec. 1402. That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment has been rendered."

2668 **Cases Involving the Constitutionality of the Revenue Acts of 1916, 1917, and 1918.**—[No suit brought under any one of these three Acts has been decided by the Supreme Court, February 24, 1919.]

2669 **Cases Involving the Constitutionality of the Act of October 3, 1913.**—The following cases arising under the income Tax Law of October 3, 1913, have been decided in the Supreme Court of the United States.

2670 Frank R. Brushaber, Appellent, v. Union Pacific Railroad Company. (240 U. S. 1.)
Appeal from the District Court of the Southern District of New York.
[For the opinion see ¶2685.]

2671 John F. Dodge and Horace E. Dodge, Appellants, v. James J. Brady, Collector of Internal Revenue. (240 U. S. 122.)
Appeal from U. S. District Court E. D. Michigan.
[For the opinion see ¶2719.]

2672 John R. Stanton, Appellant, v. Baltic Mining Company *et al.* (240 U. S. 103.)
Appeal from U. S. District Court District of Massachusetts.
[For the opinion see ¶2722.]

2673 Tyee Realty Company, Plaintiff in Error, v. Charles W. Anderson, Collector of of Internal Revenue. (240 U. S. 115.)
In Error to U. S. District Court S. D. New York.
[For the opinion see ¶2715.]

2674 Edwin Thorne, Plaintiff in Error, v. Charles W. Anderson, Collector of Internal Revenue. (240 U. S. 115.)
In Error to U. S. District Court S. D. New York.
[For the opinion see ¶2715.]

2675 John F. Dodge and Horace Dodge, Appellants, v. William H. Osborn, Commissioner of Internal Revenue. (240 U. S. 118.)
Appeal from the Court of Appeals of the District of Columbia.

2676 [Comment: The appellants here [¶2675], sought in the lower courts to enjoin the assessment and collection of the additional tax. The Court of Appeals of the District of Columbia affirmed the decree of the Supreme Court of the District of Columbia dismissing the bill and held that the constitutional questions could not be considered in a proceeding to enjoin collection. The U. S. Supreme Court affirmed. For the opinion see paragraph 2580.]

2677 Howard Gould, Plaintiff in Error v. Katherine C. Gould. (245 U. S. 151).
In error to the Supreme Court of the State of New York.
[For opinion see ¶2732.]

2678 Henry R. Towne, Plaintiff in Error v. Mark Eisner, Collector of Internal Revenue (245 U. S. 418.)
In error to the U. S. District Court for the Southern District of New York.
[For opinion see ¶2738.]

2679 William E. Peck & Co., Inc., Plaintiff in Error v. John Z. Lowe, Jr., Collector of Internal Revenue. 247 U. S. 165.
In error to the U. S. District Court for the Southern District of New York.
[For opinion see ¶2754.]

2680 E. J. Lynch, Collector of Internal Revenue, Petitioner, v. H. C. Hornby. (247 U. S. 339)
On writ of certiorari to the U. S. Circuit Court of Appeals for the Eighth Circuit.
[For opinion see ¶2763.]

2681 E. J. Lynch, Collector of Internal Revenue, petitioner v. Henry Turrish. (247 U. S. 221.)
On writ of certiorari to the U. S. Circuit Court of Appeals for the Eighth Circuit.
[For opinion see ¶2776.]

2682 Charles A. Peabody, Plaintiff in Error v. Mark Eisner, Collector of Internal Revenue. (247 U. S. 347.)
In error to the U. S. District Court for the Southern District of New York.
[For opinion see ¶2802.]

2683 Southern Pacific Company, Plaintiff in Error v. John Z. Lowe, Jr., Collector of Internal Revenue. (247 U. S. 330.)
In error to the U. S. District Court for the Southern District of New York.
[For opinion see ¶2804.]

2684 Gulf Oil Corporation, Petitioner v. C. J. Lewellyn, Collector of Internal Revenue. (December 9, 1918.)
On writ of certiorari to the U. S. Circuit Court of Appeals for the Third Circuit.
[For opinion see ¶2820.]

Brushaber v. U. P. Railroad Company.
(240 U. S. 1.)

2685 The appended decision of the Supreme Court of the United States in the case of Frank R. Brushaber v. Union Pacific Railroad Co. is published for the information of internal-revenue officers and others concerned. (T. D. 2290, Jan. 31, 1916.)

(January 24, 1916.)

Mr. Chief Justice White delivered the opinion of the Court.

As a stockholder of the Union Pacific Railroad Company the appellant filed his
2686 bill to enjoin the corporation from complying with the income tax provisions of the Tariff Act of October 3, 1913, (Section II, ch. 16, 38 Statutes 166). Because of constitutional questions duly arising the case is here on direct appeal from a decree sustaining a motion to dismiss because no ground for relief was stated.

The right to prevent the corporation from returning and paying the tax was based
2687 upon many averments as to the repugnancy of the statute to the Constitution of the United States, of the peculiar relation of the corporation to the stockholders and their particular interests resulting from many of the administrative provisions of the assailed act, of the confusion, wrong and multiplicity of suits and the absence of all means of redress which would result if the corporation paid the tax and complied with the act in other respects without protest, as it was alleged it was its intention to do. To put out of the way a question of jurisdiction we at once say that in view of these averments and the ruling in Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, sustaining the right of a stockholder to sue to restrain a corporation under proper averments from voluntarily

paying a tax charged to be unconstitutional on the ground that to permit such a suit did not violate the prohibitions of Section 3224, Revised Statutes, against enjoining the enforcement of taxes, we are of opinion that the contention here made that there was no jurisdiction of the cause since to entertain it would violate the provisions of the Revised Statutes referred to is without merit. Before coming to dispose of the case on the merits, however, we observe that the defendant corporation having called the attention of the government to the pendency of the cause and the nature of the controversy and its unwillingness to voluntarily refuse to comply with the act assailed, the United States as amicus curiae has at bar been heard both orally and by brief for the purpose of sustaining the decree.

Aside from the averments as to citizenship and residence, recitals as to the provisions
2688 of the statute and statements as to the business of the corporation contained in the first ten paragraphs of the bill advanced to sustain jurisdiction, the bill alleged twenty-one constitutional objections specified in that number of paragraphs or subdivisions. As all the grounds assert a violation of the Constitution, it follows that in a wide sense they all charge a repugnancy of the statute to the Sixteenth Amendment under the more immediate sanction of which the statute was adopted.

The various propositions are so intermingled as to cause it to be difficult to classify
2689 them. We are of opinion, however, that the confusion is not inherent, but rather arises from the conclusion that the Sixteenth Amendment provides for a hitherto unknown power of taxation, that is, a power to levy an income tax which although direct should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far-reaching effect of this erroneous assumption will be made clear by generalizing the many contentions advanced in argument to support it, as follows: (a) The Amendment authorizes only a particular character of direct tax without apportionment, and therefore if a tax is levied under its assumed authority which does not partake of the characteristics exacted by the Amendment, it is outside of the Amendment and is void as a direct tax in the general constitutional sense because not apportioned. (b) As the Amendment authorizes a tax only upon incomes "from whatever source derived," the exclusion from taxation of some income of designated persons and classes is not authorized and hence the constitutionality of the law must be tested by the general provisions of the Constitution as to taxation, and thus again the tax is void for want of apportionment. (c) As the right to tax "incomes from whatever source derived" for which the Amendment provides must be considered as exacting intrinsic uniformity, therefore no tax comes under the authority of the Amendment not conforming to such standard, and hence all the provisions of the assailed statute must once more be tested solely under the general and pre-existing provisions of the Constitution, causing the statute again to be void in the absence of apportionment. (d) As the power conferred by the Amendment is new and prospective, the attempt in the statute to make its provisions retroactively apply is void because so far as the retroactive period is concerned, it is governed by the pre-existing constitutional requirement as to apportionment.

But it clearly results that the proposition and the contentions under it, if acceded
2690 to, would cause one provision of the Constitution to destroy another; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned. Moreover, the tax authorized by the Amendment, being direct, would not come under the rule of uniformity applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to authorize a particular direct tax not subject either to apportionment or to the rule of geographical uniformity, thus giving power to impose a different tax in one state or states than was levied in another state or states. This result instead of simplifying the situation and making clear the limitations on the taxing power, which obviously the Amendment must have been intended to accomplish, would create radical and destructive changes in our constitutional system and multiply confusion.

But let us by a demonstration of the error of the fundamental proposition as to the
2691 significance of the Amendment dispel the confusion necessarily arising from the arguments deduced from it. Before coming, however, to the text of the Amendment, to the end that its significance may be determined in the light of the previous legislative and judicial history of the subject with which the Amendment is concerned and with a knowledge of the conditions which presumptively led up to its adoption and hence of the purpose it was intended to accomplish, we make a brief statement on those subjects.

That the authority conferred upon Congress by section 8 of Article I "to lay and
2692 collect taxes, duties, imposts and excises" is exhaustive and embraces every conceivable power of taxation has never been questioned, or, if it has, has been so often authoritatively declared as to render it necessary only to state the doctrine. And it has also never been questioned from the foundation, without stopping presently to determine under which of the separate headings the power was properly to be classed, that there

was authority given as the part was included in the whole, to lay and collect income taxes. Again, it has never moreover been questioned that the conceded complete and all-embracing taxing power was subject, so far as they were respectively applicable, to limitations resulting from the requirements of Art. I, sec. 8, cl. 1, that "all duties, imposts and excises shall be uniform throughout the United States," and to the limitations of Art. I, sec. 2, cl. 3, that "direct taxes shall be apportioned among the several states" and of Art. 1, sec. 9, cl. 4, that "no capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken." In fact the two great subdivision embracing the complete and perfect delegation of the power to tax and the two correlated limitations as to such power were thus aptly stated by Mr. Chief Justice Fuller in Pollock v. Farmers' Loan & Trust Company, supra, at page 557: "In the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely: The rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts and excises." It is to be observed, however, as long ago pointed out in Veazie Bank v. Fenno, 8 Wall. 533, 541, that the requirement of apportionment as to one of the great classes and of uniformity as to the other class were not so much a limitation upon the complete and all embracing authority to tax, but in their essence were simply regulations concerning the mode in which the plenary power was to be exerted. In the whole history of the Government down to the time of the adoption of the Sixteenth Amendment, leaving aside some conjectures expressed to the possibility of a tax lying intermediate between the two great classes and embraced by neither, no question has been anywhere made as to the correctness of these propositions. At the very beginning, however, there arose differences of opinion concerning the criteria to be applied in determining in which of the two great subdivisions a tax would fall. Without pausing to state at length the basis of these differences and the consequences which arose from them, as the whole subject was elaborately reviewed in Pollock v. Farmers' Loan & Trust Company, 157 U. S. 429; 158 U. S. 601, we make a condensed statement which is in substance taken from what was said in that case. Early the differences were manifested in pressing on the one hand and opposing on the other, the passage of an act levying a tax without apportionment on carriages "for the conveyance of persons," and when such a tax was enacted the question of its repugnancy to the Constitution soon came to this court for determination. (Hylton v. United States, 3 Dall. 171.) It was held that the tax came within the class of excises, duties and imposts and therefore did not require apportionment, and while this conclusion was agreed to by all the members of the court who took part in the decision of the case, there was not an exact coincidence in the reasoning by which the conclusion was sustained. Without stating the minor differences, it may be said with substantial accuracy that the divergent reasoning was this: On the one hand, that the tax was not in the class of direct taxes requiring apportionment because it was not levied directly on property because of its ownership but rather on its use and was therefore an excise, duty or impost; and on the other, that in any event the class of direct taxes included only taxes directly levied on real estate because of its ownering. Putting out of view the difference of reasoning which led to the concurrent conclusion in the Hylton case, it is undoubted that it came to pass in legislative practice that the line of demarcation between the two great classes of direct taxes on the one hand and excises, duties and imposts on the other which was exemplified by the ruling in that case, was accepted and acted upon. In the first place this is shown by the fact that wherever (and there were a number of cases of that kind) a tax was levied directly on real estate or slaves because of ownership, it was treated as coming within the direct class and apportionment was provided for, while no instance of apportionment as to any other kind of tax is afforded. Again the situation is aptly illustrated by the various acts taxing incomes derived from property of every kind and nature which were enacted beginning in 1861 and lasting during what may be termed the Civil War period. It is not disputable that these latter taxing laws were classed under the head of excises, duties and imposts because it was assumed that they were of that character inasmuch as, although putting a tax burden on income of every kind, including that derived from property real or personal, they were not taxes directly on property because of its ownership. And this practical construction came in theory to be the accepted one since it was adopted without dissent by the most eminent of the text-writers. 1 Kent. Com. 254, 256; 1 Story Const., Sect. 955; Cooley Const. Lim. (5th ed.) 480; Miller on the Constitution, 237; Pomeroy's Constitutional Law, Section 281; Hare Const. Law, Vol. 1, 249, 250; Burroughs on Taxation, 502; Ordronaux, Constitutional Legislation, 225.

Upon the lapsing of a considerable period after the repeal of the income tax laws
2693 referred to, in 1894 an act was passed laying a tax on incomes from all classes of property and other sources of revenue which was not apportioned, and which therefore was of course assumed to come within the classification of excises, duties and imposts which were subject to the rule of uniformity but not to the rule of apportionment. The constitutional validity of this law was challenged on the ground that it did not fall within the class of excises, duties and imposts, but was direct in the constitutional sense and was

therefore void for want of apportionment, and that question came to this court and was passed upon in Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429; 158 U. S. 601. The court, fully recognizing in the passage which we have previously quoted the all-embracing character of the two great classifications including, on the one hand, direct taxes subject to apportionment, and on the other, excises, duties and imposts subject to uniformity, held the law to be unconstitutional in substance for these reasons. Concluding that the classification of direct was adopted for the purpose of rendering it impossible to burden by taxation accumulations of property, real or personal, except subject to the regulation of apportionment, it was held that the duty existed to fix what was a direct tax in the constitutional sense so as to accomplish this purpose contemplated by the Constitution. (157 U. S. 581.) Coming to consider the validity of the tax from this point of view, while not questioning at all that in common understanding it was direct merely on income and only indirect on property, it was held that considering the substance of things it was direct on property in a constitutional sense since to burden an income by a tax was from the point of substance to burden the property from which the income was derived and thus accomplish the very thing which the provision as to apportionment of direct taxes was adopted to prevent. As this conclusion but enforced a regulation as to the mode of exercising power under particular circumstances, it did not in any way dispute the all embracing taxing authority possessed by Congress, including necessarily therein the power to impose income taxes if only they conformed to the constitutional regulations which were applicable to them. Moreover in addition the conclusion reached in the Pollock case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it. Nothing could serve to make this clearer than to recall that in the Pollock case in so far as the law taxed incomes from other classes of property than real estate and invested personal property, that is, income from "professions, trades, employments, or vocations" (158 U. S. 637), its validity was recognized; indeed it was expressly declared that no dispute was made upon that subject and attention was called to the fact that taxes on such income had been sustained as excise taxes in the past. Ib. p. 635. The whole law was, however, declared unconstitutional on the ground that to permit it to thus operate would relieve real estate and invested personal property from taxation and "would leave the burden of the tax to be borne by professions, trades, employments, or vocations; and in that way what was intended as a tax on capital would remain, in substance, a tax on occupations and labor," (Ib. p. 637) a result which it was held could not have been contemplated by Congress.

This is the text of the Amendment:

2694 "That Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

It is clear on the face of this text that it does not purport to confer power to levy **2695** income taxes in a generic sense—an authority already possessed and never questioned—or to limit and distinguish between one kind of income taxes and another, but that the whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived. Indeed, in the light of the history which we have given and of the decision in the Pollock case and the ground upon which the ruling in that case was based, there is no escape from the conclusion that the Amendment was drawn for the purpose of doing away for the future with the principle upon which the Pollock case was decided, that is, of determining whether a tax on income was direct not by a consideration of the burden placed on the taxed income upon which it directly operated, but by taking into view the burden which resulted on the property from which the income was derived, since in express terms the Amendment provides that income taxes, from whatever source the income may be derived, shall not be subject to the regulations of apportionment. From this in substance it indisputably arises, first, that all the contentions which we have previously noticed concerning the assumed limitations to be implied from the language of the Amendment as to the nature and character of the income taxes which it authorized find no support in the text and are in irreconcilable conflict with the very purpose which the Amendment was adopted to accomplish. Second, that the contention that the Amendment treats a tax on income as a direct tax although it is relieved from apportionment and is necessarily therefore not subject to the rule of uniformity as such rule only applies to taxes which are not direct, thus destroying the two great classifications which have been recognized and enforced

from the beginning, is also wholly without foundation since the command of the Amendment that all income taxes shall not be subject to apportionment by a consideration of the sources from which the taxed income may be derived, forbids the application to such taxes of the rule applied in the Pollock case by which alone such taxes were removed from the great class of excises, duties and imposts subject to the rule of uniformity and were placed under the other or direct class. This must be unless it can be said that although the Constitution as a result of the Amendment in express terms excludes the criterion of source of income, that criterion yet remains for the purpose of destroying the classifications of the constitution by taking an excise out of the class to which it belongs and transferring it to a class in which it cannot be placed consistently with the requirements of the Constitution. Indeed, from another point of view, the Amendment demonstrates that no such purpose was intended and on the contrary shows that it was drawn with the object of maintaining the limitations of the Constitution and harmonizing their operation. We say this because it is to be observed that although from the date of the Hylton case because of statements made in the opinions in that case it had come to be accepted that direct taxes in the constitutional sense were confined to taxes levied directly on real estate because of its ownership, the Amendment contains nothing repudiating or challenging the ruling in the Pollock case that the word direct had a broader significance since it embraced also taxes levied directly on personal property because of its ownership, and therefore the amendment at least impliedly makes such wider significance a part of the constitution—a condition which clearly demonstrates that the purpose was not to change the existing interpretation except to the extent necessary to accomplish the result intended, that is, the prevention of the resort to the sources from which a taxed income was derived in order to cause a direct tax on the income to be a direct tax on the source itself and thereby to take an income tax out of the class of excises, duties and imports and place it in the class of direct taxes.

We come then to ascertain the merits of the many contentions made in the light
2696 of the Constitution as it now stands that is to say including within its terms the provisions of the Sixteenth Amendment as correctly interpreted. We first dispose of two propositions assailing the validity of the statute on the one hand because of its repugnancy to the Constitution in other respects, and especially because its enactment was not authorized by the Sixteenth Amendment.

The statute was enacted October 3, 1913, and provided for a general yearly income
2697 tax from December to December of each year. Exceptionally, however, it fixed a first period embracing only the time from March 1, to December 31, 1913, and this limited retroactivity is assailed as repugnant to the due process clause of the Fifth Amendment and as inconsistent with the Sixteenth Amendment itself. But the date of the retroactivity did not extend beyond the time when the Amendment was operative, and there can be no dispute that there was power by virtue of the Amendment during that period to levy the tax, without apportionment, and so far as the limitations of the Constitution in other respects are concerned, the contention is not open, since in Stockdale vs. Insurance Companies, 20 Wall 323, 331, in sustaining a provision in a prior income tax law which was assailed because of its retroactive character, it was said:

"The right of Congress to have imposed this tax by a new statute, although the measure of it was governed by the income of the past year, cannot be doubted; much less can it be doubted that it could impose such a tax on the income of the current year, though part of that year had elapsed when the statute was passed. The joint resolution of July 4, 1864, imposed a tax of five per cent upon all income of the previous year, although one tax on it had already been paid, and no one doubted the validity of the tax or attempted to resist it."

The statute provides that the tax should not apply to enumerated organizations
2698 or corporations, such as labor, agricultural or horticultural organizations, mutual savings banks, etc., and the argument is that as the Amendment authorized a tax on incomes "from whatever source derived," by implication it excluded the power to make these exemptions. But this is only a form of expressing the erroneous contention as to the meaning of the Amendment, which we have already disposed of. And so far as this alleged illegality is based on other provisions of the Constitution, the contention is also not open, since it was expressly considered and disposed of in Flint v. Stone Tracy Co., 220 U. S. 108, 173.

Without expressly stating all the other contentions, we summarize them to a
2699 degree adequate to enable us to typify and dispose of all of them.

1. The statute levies one tax called a normal tax on all incomes of individuals
2700 up to $20,000 and from that amount up by gradations, a progressively increasing tax called an additional tax, is imposed. No tax, however, is levied upon incomes of unmarried individuals amounting to $3,000 or less nor upon incomes of married persons amounting to $4,000 or less. The progressive tax and the exempted amounts, it is said, are based on wealth alone and the tax is therefore repugnant to the due process clause of the Fifth Amendment.

2. The act provides for collecting the tax at the source, that is, makes it the duty
2701 of corporations, etc., to retain and pay the sum of the tax on interest due on bonds and mortgages, unless the owner to whom the interest is payable gives a notice that he claims an exemption. This duty cast upon corporations, because of the cost to which they are subjected, is asserted to be repugnant to due process of law as a taking of their property without compensation, and we recapitulate various contentions as to discrimination against corporations and against individuals predicated on provisions of the act dealing with the subject:

(*a*) Corporations indebted upon coupon and registered bonds are discriminated
2702 against, since corporations not so indebted are relieved of any labor or expense involved in deducting and paying the taxes of individuals on the income derived from bonds.

(*b*) Of the class of corporations indebted as above stated, the law further dis-
2703 criminates against those which have assumed the payment of taxes on their bonds, since, although some or all of their bondholders may be exempt from taxation, the corporations have no means of ascertaining such fact, and it would therefore result that taxes would often be paid by such corporations when no taxes were owing by the individuals to the Government.

(*c*) The law discriminates against owners of corporate bonds in favor of individuals
2704 none of whose income is derived from such property, since bondholders are, during the interval between the deducting and the paying of the tax on their bonds, deprived of the use of the money so withheld.

(*d*) Again corporate bondholders are discriminated against because the law does
2705 not release them from payment of taxes on their bonds even after the taxes have been deducted by the corporation, and therefore if after deduction the corporation should fail, the bondholders would be compelled to pay the tax a second time.

(*e*) Owners of bonds the taxes on which have been assumed by the corporation are
2706 discriminated against because the payment of the taxes by the corporation does not relieve the bondholders of their duty to include the income from such bonds in making a return of all income, the result being a double payment of the taxes, labor and expense in applying for a refund, and a deprivation of the use of the sum of the taxes during the interval which elapses before they are refunded.

3. The provision limiting the amount of interest paid which may be deducted from
2707 gross income of corporations for the purpose of fixing the taxable income to interest on indebtedness not exceeding one-half the sum of bonded indebtedness and paid-up capital stock, is also charged to be wanting in due process because discriminating between different classes of corporations and individuals.

4. It is urged that want of due process results from the provision allowing indi-
2708 viduals to deduct from their gross income dividends paid them by corporations whose incomes are taxed and not giving such rights of deduction to corporations.

5. Want of due process is also asserted to result from the fact that the act allows
2709 a deduction of $3,000 or $4,000 to those who pay the normal tax, that is, whose incomes are $20,000 or less, and does not allow the deduction to those whose incomes are greater than $20,000; that is, such persons are not allowed for the purpose of the additional or progressive tax a second right to deduct the $3,000 or $4,000 which they have already enjoyed. And a further violation of due process is based on the fact that for the purpose of the additional tax no second right to deduct dividends received from corporations is permitted.

6. In various forms of statement, want of due process, it is moreover insisted,
2710 arises from the provisions of the act allowing a deduction for the purpose of ascertaining the taxable income of stated amounts on the ground that the provisions discriminate between married and single people and discriminate between husbands and wives who are living together and those who are not.

7. Discrimination and want of due process results, it is said, from the fact that
2711 the owners of houses in which they live are not compelled to estimate the rental value in making up their incomes, while those who are living in rented houses and pay rent are not allowed, in making up their taxable income, to deduct rent which they have paid, and that want of due process also results from the fact that although family expenses are not as a rule permitted to be deducted from gross to arrive at taxable, income, farmers are permitted to omit from their income return, certain products of the farm which are susceptible of use by them for sustaining their families during the year.

So far as these numerous and minute, not to say in many respects hypercritical
2712 contentions, are based upon an assumed violation of the uniformity clause, their want of legal merit is at once apparent, since it is settled that that clause exacts only a geographical uniformity and there is not a semblance of ground in any of the propositions for assuming that a violation of such uniformity is complained of. Knowlton v. Moore, 178 U. S. 41; Patton v. Brady, 184 U. S. 608, 622; Flint v. Stone Tracy Co. 220 U. S. 107, 158; Billings v. United States, 232 U. S. 608, 622.

So far as the due process clause of the Fifth Amendment is relied upon, it suffices
2713 to say that there is no basis for such reliance since it is equally well settled that such clause is not a limitation upon the taxing power conferred upon Congress by the Constitution; in other words, that the Constitution does not conflict with itself by conferring upon the one hand a taxing power and taking the same power away on the other by the limitations of the due process clause. Treat v. White, 181 U. S. 264; Patton v. Brady, 184 U. S., 608; McCray v. United States, 195 U. S. 27, 61; Flint v. Stone Tracy Co., supra; Billings v. United States, 232 U. S. 261, 282. And no change in the situation here would arise even if it be conceded, as we think it must be, that this doctrine would have no application in a case where although there was a seeming exercise of the taxing power, the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation but a confiscation of property, that is, a taking of the same in violation of the Fifth Amendment, or, what is equivalent thereto, was so wanting in basis for classification as to produce such a gross and patent inequality as to inevitably lead to the same conclusion. We say this because none of the propositions relied upon in the remotest degree present such questions. It is true that it is elaborately insisted that although there be no express constitutional provision prohibiting it, the progressive feature of the tax causes it to transcend the conception of all taxation and to be a mere arbitrary abuse of power which must be treated as wanting in due process. But the propostion disregards the fact that in the very early history of the Government a progressive tax was imposed by Congress and that such authority was exerted in some if not all of the various income taxes enacted prior to 1894 to which we have previously adverted. And over and above all this the contention but disregards the further fact that its absolute want of foundation in reason was plainly pointed out in Knowlton v. Moore, supra, and the right to urge it was necessarily foreclosed by the ruling in that case made. In this situation, it is, of course, superfluous to say that arguments as to the expediency of levying such taxes or of the economic mistake or wrong involved in their imposition are beyond judicial cognizance. Besides this demonstration of the want of merit in the contention based upon the progressive feature of the tax, the error in the others is equally well established either by prior decisions or by the adequate bases for classification which are apparent on the face of the assailed provisions, that is, the distinction between individuals and corporations, the difference between various kinds of corporations, etc., etc., Knowlton v. Moore, supra Flint v. Stone Tracy Co., supra; Billings v. United States ,supra; National Bank v. Commonwealth, 9 Wall 353; National Safe Deposit Co. v. Illinois, 232 U. S. 58, 70. In fact, comprehensively surveying all the contentions relied upon, aside from the erroneous construction of the Amendment which we have previously disposed of, we cannot escape the conclusion that they all rest upon the mistaken theory that although there be differences between the subjects taxed, to differently tax them transcends the limit of taxation and amounts to a want of due process, and that where a tax levied is believed by one who resists it enforcement to be wanting in wisdom and to operate injustice, from that fact in the nature of things there arises a want of due process of law and a resulting authority in the judiciary to exceed its powers and correct what is assumed to be mistaken or unwise exertions by the legislative authority of its lawful powers, even although there be no semblance of warrant in the Constitution for so doing.

We have not referred to a contention that because certain administrative powers
2714 to enforce the act were conferred by the statute upon the Secretary of the Treasury, therefore it was void as unwarrantedly delegating legislative authority, because we think to state the proposition is to answer it. Field v. Clark, 143 U. S. 649; Buttfield v. Stranahan, 192 U. S. 470, 496; Oceanic Steam Navigation Co. v. Stranahan, 214 U. S. 320.

Affirmed.

Mr. Justice McReynolds took no part in the consideration and decision of this case.

Tyee Realty Company vs. Anderson
and
Edwin Thorne vs. Anderson.

(240 U. S. 115.)

2715 The appended decision of the Supreme Court of the United States in the case of Tyee Realty Co. v. Anderson, collector, and Edwin Thorne v. Anderson, collector, is published for the information of internal-revenue officers and others concerned. (T. D. 2300, March 3, 1916.)

(February 21, 1916.)

Mr. Chief Justice White delivered the opinion of the Court.

Both the plaintiffs in error, the one in 393 a corporation and the other in 394 an
2716 individual, paid under protest to the Collector of Internal Revenue, taxes assessed under the Income Tax section of the Tariff Act of October 3, 1913 (Sec. II, ch. 16, 38 Stat. 166). After an adverse ruling by the Commissioner of Internal Revenue on

appeals which were prosecuted conformably to the statute (Rev. Stat. Sections 3220, 3226) by both the parties for a refunding to them of the taxes paid, these suits were commenced to recover the amounts paid on the ground of the repugnance to the Constitution of the Section of the Statute under which the taxes had been collected, and the cases are here on direct writs of error to the judgments of the court below sustaining demurrers to both complaints on the ground that they stated no cause of action.

Every contention relied upon for reversal in the two cases is embraced within the
2717 following propositions: (a) that the tax imposed by the statute was not sanctioned by the Sixteenth Amendment because the statute exceeded the exceptional and limited power of direct income taxation for the first time conferred upon Congress by that Amendment and, being outside of the Amendment and governed solely therefore by the general taxing authority conferred upon Congress by the Constitution, the tax was void as an attempt to levy a direct tax without apportionment under the rule established by Pollock v. Farmers' Loan & Trust Company, 157 U. S. 429; 158 U. S. 601. (b) That the statute is moreover repugnant to the Constitution because of the provision therein contained for its retroactive operation for a designated time and because of the illegal discrimination and inequalities which it creates, including the provision for a progressive tax on the income of individuals and the method provided in the statute for computing the taxable income of corporations.

But we need not now enter into an original consideration of the merits of these
2718 contentions, because each and all of them were considered and adversely disposed of in Brushaber v. Union Pacific Railroad Company [¶2685]. That case, therefore, is here absolutely controlling and decisive. If follows that for the reasons stated in the opinion in the Brushaber case the judgments in these cases must be and they are

AFFIRMED.

Dodge vs. Brady.

(240 U. S. 122.)

2719 The appended decision of the Supreme Court of the United States in the case of Dodge v. Brady, collector, is published for the information of internal-revenue officers and others concerned. (T. D. 2302, March 3, 1916.)

(February 21, 1916.)

Mr. Chief Justice White delivered the opinion of the Court.

The appellants are the same persons who sued in Dodge v. Osborn, just decided
2720 [¶2580]. After the dismissal of that suit by the Supreme Court of the District of Columbia for want of jurisdiction the parties, on June 10, 1914, filed their bill in the court below against the Collector of Internal Revenue to enjoin the collection of the surtaxes assessed against them which were disputed in the previous case on substantially the same grounds alleged in the complaint in that case. The bill alleged, however, that plaintiffs had filed with the Collector "an appeal or claim for the remission and abatement of the surtaxes" because of the unconstitutionality of the statute imposing them and that the Commissioner of Internal Revenue to whom the claim had been forwarded by the Collector had such protest under advisement. Upon the filing of the bill the plaintiffs moved for a preliminary injunction which was denied July 29, 1914. On the same day by leave of court a supplemental bill was filed which alleged that since the filing of the original bill the Commissioner of Internal Revenue had ruled adversely upon plaintiffs' protest and that thereupon they had paid the surtaxes to the Collector under protest, and they prayed a recovery of the amount paid to the Collector and for the other relief asked in the original bill. The defendant moved to dismiss the bill for want of jurisdiction because the suit was brought to enjoin the collection of a tax contrary to the provisions of Section 3224 Revised Statutes and for want of equity because the Income Tax Law was constitutional and valid. The court sustained the motion on the latter ground and dismissed the bill on the merits and the case is here on direct appeal because of the constitutional questions.

The government insists that the court below was without jurisdiction to decide
2721 the merits and we come first to that question. It is apparent if the original bill alone is taken into view that the suit was brought to enjoin the collection of a tax and the court was without jurisdiction by the reasons stated in the previous case. And it is argued by the Government that there was no jurisdiction under the supplemental bill since it fails to allege that an appeal was taken to the Commissioner of Internal Revenue after the payment of the taxes and that he refused to refund them and therefore fails to allege a compliance with the conditions imposed by sections 3220 and 3226 of the Revised Statutes as prerequisites to a suit to recover taxes wrongfully collected. But broadly considering the whole situation and taking into view the peculiar facts of the case, the protest to the Commissioner and his exertion of authority over it and his adverse ruling upon the merits of the tax, thereby passing upon every question which he would be called upon to decide on an appeal for a refunding of the taxes paid, we think that this case is so exceptional in character as not to justify us in holding that reversible error was committed by the court below in passing upon the case upon its merits, thus putting an end

to further absolutely useless and unnecessary controversy. We say useless and unnecessary because on the merits all the contentions urged by the appellants concerning the unconstitutionality of the law and of the surtaxes which it imposes have been considered and adversely disposed of in Brushaber v. Union Pacific Railroad Company [¶2685].

JUDGMENT AFFIRMED.

Stanton v. Baltic Mining Co.

(240 U. S. 103.)

2722 The appended decision of the Supreme Court of the United States in the case of Stanton v. Baltic Mining Co. is published for the information of internal-revenue officers and others concerned. (T. D. 2303, March 3, 1916.)

(February 21, 1916.)

Mr. Chief Justice White delivered the opinion of the Court.

As in Brushaber v. Union Pacific Railroad Company, [¶2685] this case was com-
2723 menced by the appellant as a stockholder of the Baltic Mining Company, the appellee, to enjoin the voluntary payment by the corporation and its officers of the tax assessed against it under the Income Tax section of the Tariff Act of October 3, 1913 (38 Stat. 166, 181). As the grounds for the equitable relief sought in this case so far as the question of jurisdiction is concerned are substantially the same as those which were relied upon in the Brushaber case, it follows that the ruling in that case upholding the power to dispose of the controversy in controlling here and we put that subject out of view.

Further also like the Brushaber case this is before us on a direct appeal prosecuted
2724 for the purpose of reviewing the action of the court below in dismissing on motion the bill for want of equity.

The bill averred: "That under and by virtue of the alleged authority contained
2725 in said Income Tax Law, if valid and constitutional, the respondent company is taxable at the rate of 1 per cent upon its gross receipts from all sources, during the calendar year ending December 31, 1914, after deducting (1) its ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties and (2) all losses actually sustained within the year and not compensated by insurance or otherwise, including depreciation arising from depletion of its ore deposits to the limited extent of 5 per cent of the 'gross value at the mine of the output' during said year." It was further alleged that the company would if not restrained make a return for taxation conformably to the statute and would pay the tax upon the basis stated without protest and that to do so would result in depriving the complainant as a stockholder of rights secured by the Constitution of the United States as the tax which it was proposed to pay without protest was void for repugnancy to that Constitution. The bill contained many averments on the following subjects which may be divided into two generic classes: (A) Those concerning the operation of the law in question upon individuals generally and upon other mining corporations and the discrimination against mining corporations which arose in favor of such other corporations and individuals by the legislation, as well as discrimination which the provisions of the act operated against mining corporatons because of the separate and more unfavorable burden cast upon them by the statute than was placed upon other corporations and individuals,—averments all of which were obviously made to support the subsequent charges which the bill contained as to the repugnancy of the law imposing the tax to the equal protection, due process and uniformity clauses of the Constitution. And (B) those dealing with the practical results on the company of the operation of the tax in question evidently alleged for the purpose of sustaining the charge which the bill made that the tax levied was not what was deemed to be the peculiar direct tax which the Sixteenth Amendment exceptionally authorized to be levied without apportionment and of the resulting repugnancy of the tax to the Constitution as a direct tax on property because of its ownership levied without conforming to the regulation of apportionment generally required by the Constitution as to such taxation.

We need not more particularly state the averments as to the various contentions
2726 in class (A), as their character will necessarily be made manifest by the statement of the legal propositions based on them which we shall hereafter have occasion to make. As to the averments concerning class (B), it suffices to say that it resulted from copious allegations in the bill as to the value of the ore body contained in the mine which the company worked and the total output for the year of the product of the mine after deducting the expenses as previously stated, that the five per cent deduction permitted by the statute was inadequate to allow for the depletion of the ore body and therefore the law to a large extent taxes not the mere profit arising from the operation of the mine, but taxes as income the yearly product which represented to a large extent the yearly depletion or exhaustion of the ore body from which during the year ore was taken. Indeed,

the following alleged facts concerning the relation which the annual production bore to the exhaustion or diminution of the property in the ore bed must be taken as true for the purpose of reviewing the judgment sustaining the motion to dismiss the bill.

"That the real or actual yearly income derived by the respondent company from its businsss or property, does not exceed $550,000. That, under the Income Tax, the said company is held taxable in an average year, to the amount of approximately $1,150,000, the same being ascertained by deducting from its net receipts of $1,400,000 only a depreciation of $100,000 on its plant and a depletion of its ore supply limited by law to 5 per cent of the value of its annual gross receipts and amounting to $150,000; whereas, in order properly to ascertain its actual income $750,000 per annum should be allowed to be deducted for such depletion, or five times the amount actually allowed."

Without attempting minutely to state every possible ground of attack which
2727 might be deducted from the averments of the bill, but in substance embracing every material grievance therein asserted and pressed in argument upon our attention in the elaborate briefs which have been submitted, we come to separately dispose of the legal propositions advanced in the bill and arguments concerning the two classes.

Class A. Under this the bill charged that the provisions of the statute are "un-
2728 constitutional and void under the Fifth Amendment, in that they deny to mining companies and their stockholders equal protection of the laws and deprive them of their property without due process of law," for the following reasons:

(1) Because all other individuals or corporations were given a right to deduct a fair and reasonable percentage for losses and depreciation of their capital and they were therefore not confined to the arbitrary 5% fixed as the basis for deductions by mning corporations.

(2) Because by reason of the difference in the allowances which the statute permitted the tax levied was virtually a net income tax on other corporations and individuals and a gross tax on mining corporations.

(3) Because the statute established a discriminating rule as to individuals and other corporations as against mining corporations on the subject of the method of the allowance for depreciations.

(4) Because the law permitted all individuals to deduct from their net income dividends received from corporations which had paid the tax on their incomes, and did not give the right to corporations to make such deductions from their income of dividends received from other corporations which had paid their income tax. This was illustrated by the averment that 99 per cent of the stock of the defendant company was owned by a holding company and that under the statute only not was the corporation obliged to pay the tax on its income, but so also was the holding company obliged to pay on the dividends paid it by the defendant company.

(5) Because of the discrimination resulting from the provision of the statute providing for a progressive increase of taxation or surtaxes to individuals and not as to corporations.

(6) Because of the exemptions which the statute made of individual incomes below $4,000 and of incomes of labor organizations and various other exemptions which were set forth.

But it is apparent from the mere statement of these contentions that each and all of them were adversely disposed of by the decision in the Brushaber case and they all therefore may be put out of view.

Class B. Under this class these propositions are relied upon:

2729 (1) That as the Sixteenth Amendment authorized only an exceptional direct income tax without apportionment, to which the tax in question does not conform, it is therefore not within the authority of that amendment.

(2) Not being within the authority of the Sixteenth Amendment the tax is therefore, within the ruling of Pollock v. Farmer's Loan & Trust Company, 157 U. S. 429; 158 U. S. 601, a direct tax and void for want of compliance with the regulation of apportionment.

As the first proposition is plainly in conflict with the meaning of the Sixteenth
2730 Amendment as interpreted in the Brushaber case it may also be put out of view.

As to the second, while indeed it is distinct from the subjects considered in the Brushaber case to the extent that the particular tax which the statute levies on mining corporations here under consideration is distinct from the tax on corporations other than mining and on individuals which was disposed of in the Brushaber case, a brief analysis will serve to demonstrate that the distinction is one without a difference and therefore that the proposition is also foreclosed by the previous ruling. The contention is that as the tax here imposed is not on the net product but in a sense somewhat equivalent to a tax on the gross product of the working of the mine by the corporation, therefore the tax is not within the purview of the Sixteenth Amendment and consequently it must be

treated as a direct tax on property because of its ownership and as such void for want of apportionment. But aside from the obvious error of the proposition intrinsically considered, it manifestly disregards the fact that by the previous ruling it was settled that the provisions of the Sixteenth Amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged and being placed in the category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived, that is by testing the tax not by what it was—a tax on income, but by a mistaken theory deduced from the origin or source of the income taxed. Mark, of course, in saying this we are not here considering a tax not within the provisions of the Sixteenth Amendment, that is, one in which the regulation of apportionment or the rule of uniformity is wholly negligible because the tax is one entirely beyond the scope of the taxing power of Congress and where consequently no authority to impose a burden either direct or indirect exists. In other words, we are here dealing solely with the restriction imposed by the Sixteenth Amendment on the right to resort to the source whence an income is derived in a case where there is power to tax for the purpose of taking the income tax out of the class of indirect to which it generically belongs and putting it in the class of direct to which it would not otherwise belong in order to subject it to the regulation of apportionment. But it is said that although this be undoubtedly true as a general rule, the peculiarity of mining property and the exhaustion of the ore body which must result from working the mine, causes the tax in a case like this where an inadequate allowance by way of deduction is made for the exhaustion of the ore body to be in the nature of things a tax on property because of its ownership and therefore subject to apportionment. Not to so hold, it is urged is as to mining property but to say, that mere form controls, thus rendering in substance the command of the Constitution that taxation directly on property because of its ownership be apportioned, wholly illusory or futile. But this merely asserts a right to take the taxation of mining corporations out of the rule established by the Sixteenth Amendment when there is no authority for so doing. It, moreover, rests upon the wholly fallacious assumption that looked at from the point of view of substance a tax on the product of a mine is necessarily in its essence and nature in every case a direct tax on property because of its ownership unless adequate allowance be made for the exhaustion of the ore body to result from working the mine. We say wholly fallacious assumption because independently of the effect of the operation of the Sixteenth Amendment it was settled in Stratton's Independence v. Howbert 231 U. S. 399 that such a tax is not a tax upon property as such because of its ownership, but a true excise levied on the results of the business of carrying on mining operations. (Pp. 413 et seq.)

As it follows from what we have said that the contentions are in substance and
2731 effect controlled by the Brushaber case and in so far as this may not be the case are without merit, it results that for the reasons stated in the opinion in that case and those expressed in this, the judgment must be and it is

AFFIRMED.

Gould vs. Gould.
(245 U. S. 151.)
November 19, 1917.

Mr. Justice McReynolds delivered the opinion of the Court.

2732 A decree of the Supreme Court for New York County entered in 1909 forever separated the parties to this proceeding, then and now citizens of the United States, from bed and board; and further ordered that plaintiff in error pay to Katherine C. Gould during her life the sum of three thousand dollars ($3,000.00) every month for her support and maintenance. The question presented is whether such monthly payments during the years 1913 and 1914 constituted parts of Mrs. Gould's income within the intendment of the Act of Congress approved October 3, 1913 (38 Stat. 114, 166), and were subject as such to the tax prescribed therein. The court below answered in the negative; and we think it reached the proper conclusion.

Pertinent portions of the Act follow:

2733 "Section II, A. Subdivision 1. That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided; * * *

"B. That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in

real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent: * * * "

2734 In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used or to enlarge their operations as so to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government, and in favor of the citizen. *United States* v. *Wigglesworth*, 2 Story 369; *American Net and Twine Company* v. *Worthington*, 141 U. S. 468, 474; *Benziger* v. *United States*, 192 U. S. 38, 55.

2735 As appears from the above quotations, the net income upon which subdivision 1 directs an annual tax shall be assessed, levied, collected and paid is defined in division B. The use of the word itself in the definition of "income" causes some obscurity, but we are unable to assert that alimony paid to a divorced wife under a decree of court falls fairly within any of the terms employed.

2736 In *Audubon* v. *Shufeldt*, 181 U. S. 575, 577, 578, we said: "Alimony does not arise from any business transaction, but from the relation of marriage. It is not founded on a contract, express or implied, but on the natural and legal duty of the husband to support the wife. The general obligation to support is made specific by the decree of the court of appropriate jurisdiction. * * * Permanent alimony is regarded rather as a portion of the husband's estate to which the wife is equitably entitled, than as strictly a debt; alimony from time to time may be regarded as a portion of his current income or earnings; * * *"

2737 The net income of the divorced husband subject to taxation was not decreased by payment of alimony under the court's order; and, on the other hand, the sum received by the wife on account thereof cannot be regarded as income arising or accruing to her within the enactment.

The judgment of the court below is *Affirmed*. (245 U. S. 151.)

Towne v. Eisner.
(245 U. S. 418.)

2738 The appended decision of the Supreme Court of the United States in the case of Henry R. Towne v. Mark Eisner, collector, is published for the information of internal-revenue officers and others concerned. (T. D. 2634, Jan. 21, 1918.)

(January 7, 1918.)

Mr. Justice Holmes delivered the opinion of the Court.

2739 This is a suit to recover the amount of a tax paid under duress in respect of a stock dividend alleged by the Government to be income. A demurrer to the declaration was sustained by the District Court and judgment was entered for the defendant, 242 Fed. Rep. 702. The facts alleged are that the corporation voted on December 17, 1913 to transfer $1,500,000 surplus, being profits earned before January 1, 1913, to its capital account, and to issue fifteen thousand shares of stock representing the same to its stockholders of record on December 26; that the distribution took place on January 2, 1914, and that the plaintiff received as his due proportion four thousand and one hundred and seventy-four and a half shares. The defendant compelled the plaintiff to pay an income tax upon his stock as equivalent to $417,450 income in cash. The District Court held that the stock was income within the meaning of the Income Tax Act of October 3, 1913, c. 16, Section II; A, subdivision 1 and 2; and B. 38 Stat. 114, 166, 167. It also held that the Act so constructed was constitutional, whereas the declaration set up that so far as the Act purported to confer power to make this levy it was unconstitutional and void.

2740 The Government in the first place moved to dismiss the case for want of jurisdiction, on the ground that the only question here is the construction of the statute, not its constitutionality. It argues that if such a stock dividend is not income within the meaning of the constitution, it is not income within the intent of the statute, and hence that the meaning of the Sixteenth amendment is not an immediate issue, and is important only as throwing light on the construction of the Act. But is is not necessarily true that income means the same thing in the Constitution and the Act. A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used. Lamar v. United States, 240 U. S. 60, 65. Whatever the meaning of the Constitution, the Government had applied its force to the plaintiff on the assertion that the statute authorized it to do so, before the suit was brought, and the Court below has sanctioned its course. The plaintiff says that the statute as it is construed and administered is unconstitutional. He is not to be defeated by the reply that the Government does not adhere to the construction by virtue of which alone it has taken and keeps the plaintiff's

money, if this Court should think that the construction would make the Act unconstitutional. While it keeps the money it opens the question whether the Act construed as it has contrued it can be maintained. The motion to dismiss is overruled. Billings v. United States 232 U. S. 261, 276. B. Altman-Company v. United States 224 U. S. 583, 596, 597.

The case being properly here, however, the construction of the Act is open, as
2741 well as its constitutionality if construed as the Government has construed it by its conduct. Billings v. United States ubi supra. Notwithstanding the thoughtful discussion that the case received below we can not doubt that the dividend was capital as well for the purposes of the Income Tax Law as for distribution between tenant for life and remainderman. What was said by this Court upon the latter question is equally true for the former. "A stock dividend really takes nothing from the property of the corporation, and adds nothing to the interest of the shareholders. Its property is not diminished and their interests are not increased. * * * The proportional interest of each shareholder remains the same. The only change is in the evidence which represents that interest, the new shares and the original shares together representing the same proportional interest that the original shares represented before the issue of the new ones." Gibbons v. Mahon, 136 U. S. 549, 559, 560. In short, the corporation is no poorer and the stockholder is no richer than they were before. Logan County v. United States, 169 U. S. 255, 261. If the plaintiff gained any small advantage by the change it certainly was not an advantage of $417,450, the sum upon which he was taxed. It is alleged and admitted that he received no more in the way of dividends and that his old and new certificates together are worth only what the old ones were worth before. If the sum had been carried from surplus to capital account without a corresponding issue of stock certificates, which there was nothing in the nature of things to prevent, we do not suppose that any one would contend that the plaintiff had received an accession to his income. Presumably his certificate would have the same value as before. Again if certificates for $1,000 par were split up in ten certificates, each for $100, we presume that no one would call the new certificates income. What has happened is that the plaintiff's old certificates have been split up in effect and have diminished in value to the extent of the value of the new.

Judgment reversed.

Mr. Justice McKenna concurs in the result.

[For refund, because of above decision, of taxes paid, see ¶2492.]

[For the bearing of the above on the question of the taxing of stock dividends as income under the Revenue Acts of 1916, 1917 and 1918, see ¶812].

[For U. S. District Court decision on "stock dividends" under Revenue Act of 1916 see ¶815.]

2742 **Digest of Recent Decisions of the Supreme Court.**—[Comment: Of the cases referred to those brought under the Act of October 3, 1913 only, are reproduced, in full, as indicated by the paragraph references. The other cases digested were brought under the Excise Tax Act of August 5, 1909.)

The following propositions of law, stated for the information and guidance of internal revenue officers and others concerned, are expressed or implied in the recent decisions of the Supreme Court of the United States in United States v. Biwabik Mining Company (T. D. 2721) (247 U. S. 116), Goldfield Consolidated Mines Company v. Scott (T. D. 2722) (247 U. S. 126) Doyle v. Mitchell Bros. Co. (T. D. 2723) (247 U. S. 179), Hays v. Gauley Mountain Coal Company (T. D. 2724) (247 U. S. 189), United States v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company (T. D. 2725) (247 U. S. 195), William E. Peck & Co. (Inc.) v. Lowe (T. D. 2726) [¶2754], Lynch v. Turrish (T. D. 2729) [2776 Southern Pacific v. Lowe (T. D. 2730) [¶2804] Lynch v. Hornby (T. D. 2731) [¶2763], and Peabody v. Eisner (T. D. 2732) [¶2802]:

1. In the determination of net income the Excise Tax Act of August 5, 1909, per-
2743 mitted the deduction from gross income of "a reasonable allowance for depreciation of property, if any"; the Income Tax Act of October 3, 1913, permitted "a reasonable allowance, for the exhaustion, wear and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per centum of the gross value at the mine of the output for the year for which the computation is made"; and the Income Tax Act of September 8, 1916, as amended permits, in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine, of the product thereof which has been mined and sold during the year for which the return and computation are made."

(a) As mining leases are not conveyances of the ore in place, but are grants of the
2744 privilege of entering upon the premises and mining and removing the ore, under none of the Acts of 1909, 1913 or 1916, may a lessee of mining property deduct as so much depletion of capital assets the proportionate value in place on January 1, 1909, or any other date, of each ton of ore mined during the taxable year. See T. D. 1606 (75); Article 145 of Regulations No. 33; and Article 8, 171 and 172 of Regulations No. 33 (revised). (United States v. Biwabik Mining Company. See Von Baumbach v. Sargent Land Company, 242 U. S. 503.)

(b) Under the Act of 1909 a mining corporation owning its mine is not entitled
2745 to a deduction from its gross income of any amount whatever on account of depletion or exhaustion of the ore bodies caused by its operations for the year for which the tax is assessed, nor to a deduction against the gross proceeds from the mining and treatment of ores to the extent of the cost value of the ore in the ground before it was mined. T. D. 1675 (80–89) and T. D. 1742 (96–105) are modified accordingly. In view of their different provisions this rule is inapplicable to situations arising under the Acts of 1913 and 1916. See Articles 141 and 142 of Regulations No. 33; and Articles 8, 171 and 172 of Regulations No. 33 (revised). (Goldfield Consolidated Mines Company v. Scott. See Stratton's Independence v. Howbert, 231 U. S. 399; Stanton v. Baltic Mining Company, 240 U. S. 103.)

2. The Excise Tax Act of August 5, 1909, measured the tax by the net income of a
2746 corporation "received" by it from all sources during the taxable year; the Income Tax Act of October 3, 1913, imposed the tax upon the net income "arising or accruing" from all sources during the taxable year; and the Income Tax Act of September 8, 1916, as amended upon the net income "received" from all sources during the taxable year.

(a) Where property is acquired by a corporation and subsequently sold for a higher
2747 price, under all three Acts the gain on the sale is income to the corporation. If, however, the property was acquired before January 1, 1909, only such portion of the gain as accrued subsequent to December 31, 1908, was taxable under the Act of 1909, and if it was acquired before March 1, 1913, only such portion of the gain as accrued subsequent to February 28, 1913, was taxable under the Act of 1913, or is taxable under the Act of 1916. See Regulations No. 31, T. D. 1606 (40, 50, 76), T. D. 1675 (37, 48, 75) T. D. 1742 (43, 55, 91); and Articles 88, 101 and 116 of Regulations No. 33 (revised) (Doyle v. Mitchell Bros. Co.; Hays v. Gauley Mountain Coal Company; United States v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.)

(b) In order to determine whether there has been gain or loss on a sale, and the
2748 amount of the gain, if any, in general under all three Acts an amount must be withdrawn from the gross proceeds sufficient to restore the cost of the property or the capital value that existed at the commencement of the period under consideration (either January 1, 1909, or March 1, 1913). Interest should not be added to the purchase price in order to ascertain the cost of the property. In apportioning the profits derived from a disposition of property acquired before and sold after January 1, 1909, for the purpose of the Act of 1909, or acquired before and sold after March 1, 1913, for the purpose of the Act of 1913, the division may be pro rata according to the time elapsed or may be based on an appraisal or inventory taken as of December 31, 1908, or February 28, 1913. This is a matter of detail, to be settled according to the best evidence obtainable and in accordance with valid departmental regulations. For the purpose of the Act of 1916, however, the fair market price or value as of March 1, 1913, to be ascertained in any practicable manner, is the statutory basis for determining the amount of gain on a sale of property acquired before that date. See Regulations No. 31, T. D. 1578, T. D. 1588, T. D. 1606 (37, 71), T. D. 1675 (36, 55, 69), T. D. 1742 (42, 62, 86); Articles 4, 90, 91, 92, 93, 101, 109, 111, 112 and 116 of Regulations No. 33 (revised), and T. D. 2649. (Doyle v. Mitchell Bros. Co.; Hays v. Gauley Mountain Coal Company; United States v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.)

(c) The Act of 1913 is valid and constitutional in taxing net income derived from
2749 sales in foreign commerce. The same principle applies to the Acts of 1909 and 1916. (William E. Peck & Co., (Inc.) v. Lowe).

2750 (d) Where a stockholder in a corporation receives as a liquidation dividend, representing his share in the distribution of the proceeds of the sale of the property of the corporation upon dissolution, a sum greater than the cost of his stock, under the Acts of both 1913 and 1916 the gain is income to the stockholder. If, however, he acquired the stock before March 1, 1913, only such portion of the gain as accrued subsequent to February 28, 1913, was taxable under the Act of 1913 or is taxable under the Act of 1916. Compare the case of a dividend in ordinary course in paragraph (f) below. See the citations in paragraphs (a) and (b) above. (Lynch v. Turrish).

(e) Where a corporation owns all the stock and operates under a lease all the
2751 property and business of another corporation, acting as banker for it and the two corporations being in substance identical and merged for all practical purposes, under the Acts of both 1913 and 1916 surplus of the lessor corporation accrues as income to the lessee corporation as and when accumulated by the lessor corporation, notwithstanding the formal distribution of such surplus in dividends to the lessee corporation may not occur during the taxable year. This special situation forms an exception to the general rule stated in paragraph (f) below. See Articles 125, 207 and 208 of Regulations No. 33 (revised). (Southern Pacific Company v. Lowe.)

(f) Where a stockholder of a corporation receives dividends paid in the ordinary
2752 course of business, even though extraordinary in amount, under the Acts of both 1913 and 1916 such dividends are income in the year in which they are received by the stockholder. If paid out of surplus accrued to the corporation prior to March 1, 1913, they were subject to tax under the Act of 1913, although expressly exempt from tax under the Act of 1916. A dividend paid by a going corporation out of current earnings or accumulated surplus when declared by the directors in their discretion, being in the nature of a recurrent return upon the stock, is distinguishable from a so-called dividend in liquidation of the entire assets and business of the corporation, which is a return to the stockholder of the value of his stock upon the surrender of his entire interest in the corporation. Compare the case of a liquidation dividend in paragraph (d) above. See Articles 105, 106 and 107 of Regulations No. 33 (revised), T. D. 2659 and T. D. 2678. (Lynch v. Hornby; Peabody v. Eisner.)

(g) A dividend in ordinary course paid on stock of a corporation in property or
2753 stock other than its own is income to the stockholders to the amount of its cash value when received under the Acts of both 1913 and 1916. A dividend paid in stock of another corporation is not a stock dividend. See Articles 4 and 106 of Regulations No. 33 (revised). (Peabody v. Eisner. Compare Towne v. Eisner, (245 U. S. 418).) [¶2738.] (T. D. 2740, June 24, 1918.)

Peck vs. Lowe.
(247 U. S. 165.)

2754 The appended decision of the United States Supreme Court in the case of William E. Peck & Company (Inc.) v. John 7. Lowe, Jr., collector of internal revenue is published for the information of internal-revenue officers and others concerned. (T. D. 2726, June 4, 1918.)

(May 20, 1918.)

Mr. Justice Van Devanter delivered the opinion of the Court.

2755 This was an action to recover a tax paid under protest and alleged to have been imposed contrary to the constitutional provision (Art. 1, sec. 9, cl. 5) that "No tax or duty shall be laid on articles exported from any State." The judgment below was for the defendant. 234 Fed. 125.

The plaintiff is a domestic corporation chiefly engaged in buying goods in the
2756 several States, shipping them to foreign countries and there selling them. In 1914 its net income from this business was $30,173.66, and from other sources $12,436.24. An income tax for that year, computed on the aggregate of these sums, was assessed against it and paid under compulsion. It is conceded that so much of the tax as was based on the income from other sources was valid, and the controversy is over so much of it as was attributable to the income from shipping goods to foreign countries and there selling them.

The tax was levied under the Act of October 3, 1913, c. 16, sec. 11, 38 Stat. 166, 172,
2757 which provided for annually subjecting every domestic corporation to the payment of a tax of a specified per centum of its "entire net income arising or accruing from all sources during the preceding calendar year." Certain fraternal and other corporations, as also income from certain enumerated sources, were specifically excepted, but none of the exceptions included the plaintiff or any part of its income. So, tested merely by the terms of the act, the tax collected from the plaintiff was rightly computed on its total net income. But as the act obviously could not impose a tax forbidden by the Constitution, we proceed to consider whether the tax, or rather the part in question, was forbidden by the constitutional provision on which the plaintiff relies.

The Sixteenth Amendment, although referred to in argument, has no real bearing
2758 and may be put out of view. As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects, but merely removes all occasion which otherwise might exist, for an apportionment among the States of taxes laid on Income, whether to be derived from one source or another. *Brushaber v. Union Pacific R. R. Co.*, 240 U. S. 1, 17–19: *Stanton v. Baltic Mining Co.*, 240 U. S. 103, 112–113.

The Constitution broadly empowers Congress not only "to lay and collect taxes,
2759 duties, imposts and excises," but also "to regulate commerce with foreign nations."

So, if the prohibitory clause invoked by the plaintiff be not in the way, Congress undoubtedly has power to lay and collect such a tax as is here in question. That clause says, "No tax or duty shall be laid on articles exported from any State." Of course it qualifies and restricts the power to tax as broadly conferred. But to what extent? The decisions of this court answer that it excepts from the range of that power articles in course of exportation, *Turpin* v. *Burgess*, 117 U. S. 504, 507; the act or occupation of exporting, *Brown* v. *Maryland*, 12 Wheat. 419, 445; bills of lading for articles being exported, *Fairbank* v. *United States*, 181 U. S. 283; charter parties for the carriage of cargoes from state to foreign ports, *United States* v. *Hvoslef*, 237 U. S. 1; and policies of marine insurance on articles being exported,—such insurance being uniformly regarded as "an integral part of the exportation" and the policy as "one of the ordinary shipping documents," *Thames and Mersey Ins. Co.* v. *United States*, 237 U. S. 19. In short, the court has interpreted the clause as meaning that exportation must be free from taxation, and therefore as requiring "not simply an omission of a tax upon the articles exported, but also a freedom from any tax which *directly* burdens the exportation." *Fairbank* v. *United States*, supra, pp. 292-293. And the court has indicated that where the tax is not laid on the articles themselves while in course of exportation the true test of its validity is whether it "so directly and closely" bears on the "process of exporting" as to be in substance a tax on the exportation. *Thames and Mersey Ins. Co.* v. *United States*, supra, p. 25. In this view it has been held that the clause does not condemn or invalidate charges or taxes, not laid on property while being exported, merely because they affect exportation indirectly or remotely; thus a charge for stamps which each package of manufactured tobacco intended for export was required to bear before removal from the factory was upheld in *Pace* v. *Burgess*, 92 U. S. 372, and *Turpin* v. *Burgess*, 117 U. S. 504; and the application of a manufacturing tax on all filled cheese to cheese manufactured under contract for export, and actually exported, was upheld in *Cornell* v. *Coyne*, 192 U. S. 418. In that case it was said, p. 427: "The true construction of the constitutional provision is that no burden by way of tax or duty can be cast upon the exportation of articles, and does not mean that articles exported are relieved from the prior ordinary burdens of taxation which rest upon all property similarly situated. The exemption attaches to the export and not to the article before its exportation."

While fully assenting and adhering to the interpretation which has been put on
2760 the clause in giving effect to its spirit as well as its letter, we are of opinion that to broaden that interpretation would be to depart from both the spirit and letter.
2761 The tax in question is unlike any of those heretofore condemned. It is not laid on articles in course of exportation or on anything which inherently or by the usages of commerce is embraced in exportation or any of its processes. On the contrary, it is an income tax laid generally on net incomes. And while it cannot be applied to any income which Congress has no power to tax (see *Stanton* v. *Baltic Mining Co.*, supra, p. 113), it is both nominally and actually a general tax. It is not laid on income from exportation because of its source, or in a discriminative way, but just as it is laid on other income. The words of the Act are "net income arising or accruing from all sources." There is no discrimination. At most, exportation is affected only indirectly and remotely. The tax is levied after exportation is completed, after all expenses are paid and losses adjusted, and after the recipient of the income is free to use it as he chooses. Thus what is taxed—the net income —is as far removed from exportation as are articles intended for export before the exportation begins. If articles manufactured and intended for export are subject to taxation under general laws up to the time they are put in course of exportation, as we have seen they are, the conclusion is unavoidable that the net income from the venture when completed, that is to say, after the exportation and sale are fully consummated, is likewise subject to taxation under general laws. In that respect the status of the income is not different from that of the exported articles prior to the exportation.

For these reasons we hold that the objection urged against the tax is not well
2762 grounded.

Judgment Affirmed.

Lynch vs. Hornby
(247 U. S. 339.)

The appended decision of the United States Supreme Court in the case of E. J.
2763 Lynch, as collector of internal revenue, v. H. C. Hornby is published for the information of internal-revenue officers and others concerned. (T. D. 2731, June 11, 1918.)

(June 3, 1918.)

Mr. Justice Pitney delivered the opinion of the Court.

Hornby, the respondent, recovered a judgment in the United States District Court
2764 against Lynch, as Collector of Internal Revenue, for the return of $171, assessed as an additional income tax under the Act of October 3, 1913 (Ch. 16, 38 Stat. 114,

166), and paid under protest. The Circuit Court of Appeals affirmed the judgment, 236 Fed. Rep. 661, and the case comes here on certiorari. It was submitted at the same time with *Lynch, Collector* v. *Turrish, ante*, ¶2776, *Southern Pacific Co.* v. *Lowe, Collector, ante*, ¶2804, and *Peabody* v. *Eisner, Collector, post*, ¶2802, arising under the same Act, and this day decided.

The facts, in brief, are as follows: Hornby, from 1906 to 1915, was the owner of
2765 434 (out of 10,000) shares of the capital stock of the Cloquet Lumber Company, an Iowa corporation, which for more than a quarter of a century had been engaged in purchasing timber lands, manufacturing the timber into lumber and selling it. Its shares had a par value of $100 each, making the entire capital stock $1,000,000. On and prior to March 1, 1913, by the increase of the value of its timber lands and through its business operations, the total property of the company had come to be worth $4,000,000, and Hornby's stock, the par value of which was $43,400, had become worth at least $150,000. In the year 1914 the company was engaged in cutting its standing timber, manufacturing it into lumber, selling the lumber, and distributing the proceeds among its stockholders. In that year it thus distributed dividends aggregating $650,000, of which $240,000, or 24 per cent. of the par value of the capital stock, was derived from current earnings, and $410,000 from conversion into money of property that it owned or in which it had an interest on March 1, 1913. Hornby's share of the latter amount was $17,794, and this not having been included in his income tax return, the Commissioner of Internal Revenue levied and additional tax of $171 on account of it, and this forms the subject of the present suit.

The case was tried in the District Court and argued in the Circuit Court of Appeals
2766 together with *Lynch, Collector* v. *Turrish* (236 Fed. Rep. 653), and was treated as presenting substantially the same question upon the merits. In our opinion it is distinguishable from the *Turrish* case, where the distribution in question was a single and final dividend received by Turrish from the Payette Company in liquidation of the entire assets and business of the company and a return to him of the value of his stock upon the surrender of his entire interest in the company, at a price that represented its intrinsic value at and before March 1, 1913, when the Income Tax Act took effect.

In the present case there was no winding up or liquidation of the Cloquet Lumber
2767 Company, nor any surrender of Hornby's stock. He was but one of many stockholders, and had but the ordinary stockholder's interest in the capital and surplus of the company, that is, a right to have them devoted to the proper business of the corporation and to receive from the current earnings or accumulated surplus such dividends as the directors in their discretion might declare. *Gibbons* v. *Mahon*, 136 U. S. 549, 557. The operations of this company in the year 1914 were, according to the facts pleaded, of a nature essentially like those in which it had been engaged for more than a quarter of a century. The fact that they resulted in converting into money, and thus setting free for distribution as dividends, a part of its surplus assets accumulated prior to March 1, 1913, does not render Hornby's share of those dividends any the less a part of his income within the true intent and meaning of the Act, the pertinent language of which is as follows (38 Stat. 166, 167):

"A. Subdivision 1. That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, * * * and to every person residing in the United States, * * * a tax of 1 per centum per annum upon such income, except as hereinafter provided; * * *

"B. That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service * * * , also from interest, rent, dividends, securities or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever."

Among the deductions allowed for the purpose of the normal tax is, "seventh,
2768 the amount received as dividends upon the stock or from the net earnings of any corporation, * * * which is taxable upon its net income as hereinafter provided." There is a graduated additional tax, commonly known as a "surtax," upon net income in excess of $20,000, including income from dividends, and for the purpose of this additional tax "the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations * * * formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed."

It is evident that Congress intended to draw and did draw a distinction between
2769 a stockholder's undivided share or interest in the gains and profits of a corporation, prior to the declaration of a dividend, and his participation in the dividends declared and paid; treating the latter, in ordinary circumstances, as a part of his income for the purposes of the surtax, and not regarding the former as taxable income unless fraudulently accumulated for the purpose of evading the tax.

This treatment of undivided profits applies only to profits permitted to accumulate
2770 after the taking effect of the Act, since only with respect to these is a fraudulent purpose of evading the tax predicable. Corporate profits that accumulated before the Act took effect stand on a different footing. As to these, however, just as we deem the legislative intent manifest to tax the stockholder with respect to such accumulations only if and when, and to the extent that, his interest in them comes to fruition as income, that is, in dividends declared, so we can perceive no constitutional obstacle that stands in the way of carrying out this intent when dividends are declared out of a pre-existing surplus. The Act took effect on March 1, 1913, a few days after the requisite number of States had given approval to the Sixteenth Amendment, under which for the first time Congress was empowered to tax income from property without apportioning the tax among the States according to population. *Southern Pacific Co.* v. *Lowe*, supra. That the retroactivity of the Act from the date of its passage (October 3, 1913) to a date not prior to the adoption of the Amendment was permissible is settled by *Brushaber* v. *Union Pacific R. R.*, 240 U. S. 1, 20. And we deem it equally clear that Congress was at liberty under the Amendment to tax as income, without apportionment, everything that became income, in the ordinary sense of the word, after the adoption of the Amendment, including dividends received in the ordinary course by a stockholder from a corporation, even though they were extraordinary in amount and might appear upon analysis to be a mere realization in possession of an inchoate and contingent interest that the stockholder had in a surplus of corporate assets previously existing. Dividends are the appropriate fruit of stock ownership, are commonly reckoned as income, and are expended as such by the stockholder without regard to whether they are declared from the most recent earnings, or from a surplus accumulated from the earnings of the past, or are based upon the increased value of the property of the corporation. The stockholder is, in the ordinary case, a different entity from the corporation, and Congress was at liberty to treat the dividends as coming to him *ab extra*, and as constituting a part of his income when they came to hand.

Hence we construe the provision of the Act that "the net income of a taxable
2771 person shall include gains, profits, and income derived from * * * interest, rent, dividends, * * * or gains or profits and income derived from any source whatever" as including (for the purposes of the additional tax) all dividends declared and paid in the ordinary course of business by a corporation to its stockholders after the taking effect of the Act (March 1, 1913), whether from current earnings, or from the accumulated surplus made up of past earnings or increase in value of corporate assets, notwithstanding it accrued to the corporation in whole or in part prior to March 1, 1913. In short, the word "dividend" was employed in the Act as descriptive of one kind of gain to the individual stockholder; dividends being treated as the tangible and recurrent returns upon his stock, analogous to the interest and rent received upon other forms of invested capital.

In the more recent Income Tax Acts, provisions have been inserted for the pur-
2772 pose of excluding from the effect of the tax any dividends declared out of earnings or profits that accrued prior to March 1, 1913. This originated with the Act of September 8, 1916, and has been continued in the Act of October 3, 1917.* We are referred to

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*In Act of September 8, 1916 (Ch. 463, 39 Stat. 756, 757), which took the place of the Act of 1913, the substance of what we have quoted from Paragraph B of the 1913 Act was embodied in Sec. 2 (a), but with this proviso: "*Provided*, that the term 'dividends' as used in this title shall be held to mean any distribution made or ordered to be made by a corporation * * * *out of its earnings or profits accrued since March first, nineteen hundred and thirteen*, and payable to its shareholders, whether in cash or in stock of the corporation," etc. And by the Act of October 3, 1917 (Ch. 63, 40 Stat. 300, 329, 337–8), Sec. 2 (a) of the 1916 Act was amended by being repeated without the proviso (p. 329), while the proviso was inserted as a new section—31 (a)—and to it was added a subsection, (b), as follows:

"(b) Any distribution made to the shareholders or members of a corporation * * * in the year nineteen hundred and seventeen, or subsequent tax years, shall be deemed to have been made from the most recently accumulated undivided profits or surplus, and shall constitute a part of the annual income of the distributee for the year in which received, and shall be taxed to the distributee at the rates prescribed by law for the years in which such profits or surplus were accumulated by the corporation, * * * but *nothing herein shall be construed as taxing any earnings or profits accrued prior to March first, nineteen hundred and thirteen*, but such earnings or profits may be distributed in stock dividends or otherwise, exempt from the tax, after the distribution of earnings and profits accrued since March first, nineteen hundred and thirteen, has been made. The subdivision shall not apply to any distribution made prior to August sixth, nineteen hundred and seventeen, out of the earnings or profits accrued prior to March first, nineteen hundred and thirteen."

the legislative history of the Act of 1916, which it is contended indicates that the new definition of the term "dividends" was intended to be declaratory of the meaning of the term as used in the 1913 Act. We cannot accept this suggestion, deeming it more reasonable to regard the change as a concession to the equity of stockholders granted in the 1916 Act, in view of constitutional questions that had been raised in this case, in the companion case of *Lynch, Collector* v. *Turrish*, and perhaps in other cases. These two cases were commenced in October, 1915; and decisions adverse to the tax were rendered in the District Court in January, 1916, and in the Circuit Court of Appeals September 4, 1916.

We repeat that under the 1913 Act dividends declared and paid in the ordinary
2773 course by a corporation to its stockholders after March 1, 1913, whether from current earnings or from a surplus accumulated prior to that date, were taxable as income to the stockholder.

We do not overlook the fact that every dividend distribution diminishes by just
2774 so much the assets of the corporation, and in a theoretical sense reduces the intrinsic value of the stock. But, at the same time, it demonstrates the capacity of the corporation to pay dividends, holds out a promise of further dividends in the future, and quite probably increases the market value of the shares. In our opinion, Congress laid hold of dividends paid in the ordinary course as *de facto* income of the stockholder, without regard to the ultimate effect upon the corporation resulting from their payment.

Of course we are dealing here with the ordinary stockholder receiving dividends
2775 declared in the ordinary way of business. *Lynch, Collector* v. *Turrish* and *Southern Pacfiic Co.* v. *Lowe, Collector*, this day decided, rest upon their special facts and are plainly distinguishable.

It results from what we have said that it was erroneous to award a return of the tax collected from the respondent, and that the judgment should be

Reversed, and the cause remanded to the District Court for further proceedings in conformity with this opinion.

Lynch vs. Turrish.

(247 U. S. 221.)

2776 The appended decision of the United States Supreme Court in the case of E. J. Lynch, as collector of internal revenue, v. Henry Turrish, is published for the information of internal-revenue officers and others concerned. (T. D. 2929, June 11, 1918.)

(June 3, 1918.)

Mr. Justice McKenna delivered the opinion of the Court.

Suit to recover an income tax, paid under protest, assessed under the Act of Oct-
2777 ober 3, 1913, 38 Stat. 166.

The facts, as admitted by demurrer, are these: Respondent, Turrish, who was
2778 plaintiff in the trial court, made a return of his income for the calendar year 1914 which showed that he had no net income for that year; afterwards the Commissioner of Internal Revenue made a supplemental assessment showing that he had received a net income of $32,712.08, which, because of specific deductions and exemptions, resulted in no normal tax, but as the net income exceeded the sum of $20,000 the Commissioner assessed an additional or super-tax of one per cent upon the excess, resulting in a tax of $127.12, which was sought to be recovered. The reassessment was based upon certain sums received by the plaintiff in the year 1914 as distributions from corporations subject to the Income Tax Law and held by the Commissioner to be income derived from dividends received by the plaintiff on stock of domestic corporations; of which the sum of $79,975, received as a distribution from the Payette Lumber & Manufacturing Company, and without which no tax could have been levied against the plaintiff, is here in dispute.

Prior to March 1, 1913, and continuously thereafter until the surrender of his
2779 stock as hereinafter mentioned, plaintiff was a stockholder in the Payette Company, which was organized in the year 1903 with power to buy, hold, and sell timber lands, and in fact never engaged in any other business than this except minor businesses incidental to it. Immediately after its organization this company began to invest in timber lands, and prior to March 1, 1913, had thus invested approximately $1,375,000.

On March 1, 1913, the value of its assets was not less than $3,000,000, of which
2780 sum the value of the timber lands was not less than $2,875,000. The increase was due to the gradual rise in the market value of the lands. At that date the value of Turrish's stock was twice its par value, or $159,950, and about that time he and all the other stockholders gave an option to sell their stock for twice its par value. The holders of the option formed another company, called the Boise-Payette Lumber Com-

pany, and transferred the options to it. The options having been extended to December 31, 1913, the new company informed the Payette Company and its stockholders shortly before this date that instead of exercising the option it preferred and proposed to purchase all of the assets of the Payette Company, paying to that company such a purchase price that there would be available for distribution to its stockholders twice the par value of their stock. The stockholders by resolution authorized this sale, and, pursuant to this and a resolution of the directors, the Payette Company transferred to the new company all of its assets, property, and franchises, and upon the completion of the transaction found itself with no assets or property, except cash to the amount of double the par value of its stock which had been paid to it by the new company, and with no debts, liabilities, or obligations except those which the new company had assumed. The cash was distributed to the stockholders on the surrender of their certificates of stock, and the company went out of business. In this way, upon the surrender of his shares, Turrish received $159,950, being double their par value.

The Commissioner of Internal Revenue considered that of this sum one-half was
2781 not taxable, being the liquidation of the par value of Turrish's stock, but that the other half was income for the year 1914 and taxable under the Act of 1913.

The question in the case is thus indicated. The District Court took a different
2782 view from that of the Commissioner of Internal Revenue and therefore overruled the demurrer to Turrish's complaint and entered judgment for him for the sum prayed, which judgment was affirmed by the Circuit Court of Appeals for the Eighth Circuit. 236 Fed. 653.

The point in the case seems a short one. It, however, has provoked much discus-
2783 sion on not only the legal but the economic distinction between capital and income and by what processes and at what point of time the former produces or becomes the latter. And this in resolution of a statute which concerns the activities of men and intended, it might be supposed, to be without perplexities and readily solvable by the off-hand conceptions of those to whom it was addressed.

The provisions of the Act, so far as material to be noticed, are the following: That
2784 there is assessed "upon the entire net income arising or accruing from all sources in the preceding calendar year to every * * * person residing in the United States * * * a tax of one per centum per annum upon such income * * * " Par. A, Subdiv. 1.

In addition to that tax, which is denominated the normal income tax, it is provided
2785 that there shall be levied "upon the net income of every individual an additional tax * * * of one per centum per annum upon the amount by which the total net income exceeds" certain amounts, and the person subject to the tax is required to make a personal return of his total net income from all sources under rules and regulations to be prescribed by the Commissioner of Internal Revenue. Subdiv. 2.

By Paragraph B it is provided that, subject to certain exemptions and deductions,
2786 "the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service * * * also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever."

2787 After specifying the exemptions and deductions allowed, the law declares as follows: "The said tax shall be computed upon the remainder of said net income of each person subject thereto, accruing during each preceding calendar year ending December thirty-first: *Provided, however*, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive * * * " Par. D.

It will be observed, therefore, that the statute levies a normal tax and an additional
2788 tax upon net incomes, derived from whatever source, "arising or accruing" each preceding calendar year ending December 31, except that for the year ending December 31, 1913, the tax shall be computed on the net income accruing from March 1, 1913, to December 31, 1913.

And in determining the application of the statute to Turrish we must keep in mind
2789 that on the admitted facts the distribution received by him from the Payette Company manifestly was a single and final dividend in liquidation of the entire assets and business of the company, a return to him of the value of his stock upon the surrender of his entire interest in the company, and at a price that represented its intrinsic value at and before March 1, 1913, when the act took effect.

The District Court and the Circuit Court of Appeals decided that the amount so
2790 distributed to Turrish was not income within the meaning of the statute, basing the decision on two propositions as expressed in the opinion of the Circuit Court of Appeals, by Sanborn, Circuit Judge—(a) The amount was the realization of an investment made some years before, representing its gradual increase during those years, and which reached its height before the effective date of the law, that is, before March 1, 1913, and the mere change of form of the property "as from real to personal property, or from stock

to cash" was not income to its holders because the value of the property was the same after as before the change; (b) The timber lands were the property, capital and capital assets of their legal and equitable owner and the enhancement of their value during a series of years "prior to the effective date of the income tax law, although divided or distributed by dividend or otherwise subsequent to that date, does not become income, gains, or profits taxable under such an act."

For proposition "a" the court cited *Collector* v. *Hubbard*, 12 Wall. 1; *Bailey* v. *Railroad Company*, 22 Wall. 604, and the same case in 106 U. S. 109. For proposition "b" *Gray* v. *Darlington*, 15 Wall. 63, was relied on.

The Government opposes both contentions by an elaborate argument containing
2791 definitions of capital and income drawn from legal and economic sources and given breadth to cover a number of other cases submitted with this. The argument, in effect, makes any increase of value of property income, emerging as such and taxable at the moment of realization by sale or some act of separation, as by dividend declared or by distribution, as in the instant case.

To sustain the argument these definitions are presented: "1. Capital is anything,
2792 material or otherwise, capable of ownership, viewed in its static condition at a moment of time, or the right of ownership therein. 2. Income is the service or return rendered by capital during a period of time. * * * 4. Net income ('profits') is the difference between income and outgo. * * * 7. In the actual production and distribution of capital there is a constant conversion of capital into income, and *vice versa*. 8. The attempt to conceal this conversion by treating 'income' as the standard return from intact 'capital' only leads to confusion of the value of capital with capital itself."

2793 From these definitions are deduced the following propositions, which are said to be decisive of the problems in the cases:

"1. Income being derived from the use of capital, the conversion or transfer of capital always produces income. 2. Mere appreciation of capital value does not produce 'income,' nor mere depreciation 'outgo.' 3. Net income is the difference between *actual* 'income' and *actual* 'outgo.' 4. Income is not confined to money income, but includes anything capable of easy valuation in money."

It will be observed that the breadth of definition and the breadth of application are
2794 necessary to the refutation of the reasoning of the Circuit Court of Appeals. There is direct antagonism, the court basing its reliance, it says, upon what it asserts is the common sense and understanding of the words of the law, and the exposition of like laws by the decisions of this court. The Government's resource is the discussion of economists and the fact, concrete and practical, of wealth not only increased but come to actual hand. The instant case is an example. Turrish's stock doubled in value. He paid for it $79,975; he received $159,950. It requires a struggle to resist the influence of the fact, but we are aided and fortified by our own precedents and saved from much intricate and subtle discussion and an elaborate review of other cases cited in confirmation or opposition.

In *Collector* v. *Hubbard*, *supra*, the distinction between a corporation and its stock-
2795 holders was recognized and that the stockholder had not title for certain purposes to the earnings of the corporation, net or other, prior to a dividend being declared, but they might become capital by investment in permanent improvements and thereby increase the market value of the shares, "whether held by the original subscribers or by assignees." In other words, it was held that the investments of the corporation were the investments of the stockholders; that is, the stockholders could have an interest, taxable under the act considered, though not identical with the corporation. This was repeated in *Bailey* v. *Railraod Company*, 22 Wall. 604, 635, 636.

The latter case came here again in 106 U. S. 109, and it was then declared that the
2796 purpose of an income tax law was to tax the income for the year that it accrued; in other words, no tax in contemplation of the law accrued upon something except for the year in which that something—earnings, profits, gains or income—accrues. In that case the subject of the tax was a scrip dividend, but the certificates did not show the year of the earnings and testimony as to the particular year was admitted. The principle applies to the case at bar. If increase in value of the lands was income, it had its particular time and such time must have been within the time of the law to be subject to the law, that is, it must have been after March 1, 1913. But, according to the fact admitted, there was no increase after that date and therefore no increase subject to the law. There was continuity of value, not gain or increase. In the first proposition of the Court of Appeals we, therefore, concur.

In support of its second proposition it adduced, as we have seen, *Gray* v. *Darlington*,
2797 15 Wall. 63. The cast arose under the income tax law of 1867, which levied "upon the gains, profits, and income of every person, * * * whether derived from any kind of property * * * or from any other source whatever * * * a tax of five per centum on the amount so derived over $1,000 * * * for the year ending the thirty-first of December next preceding the time for levying, collecting and paying said tax."

Darlington, in 1865, being the owner of certain United States Treasury notes,
2798 exchanged them for United States bonds. In 1869 he sold the bonds at an advance of $20,000 over the cost of the notes and upon this amount was levied a tax of five per centum as gains, profits and income for that year. He paid the tax under protest and sued to recover, and prevailed. This court, by Mr. Justice Field, said: "The question presented is whether the advance in the value of the bonds, during this period of four years, over their cost, realized by their sale, was subject to taxation as gains, profits, or income of the plaintiff for the year in which the bonds were sold. The answer which should be given to this question does not, in our judgment, admit of any doubt. The advance in the value of property during a series of years can, in no just sense be considered the gains, profits, or income of any one particular year of the series, although the entire amount of the advance be at one time turned into money by the sale of the property. The statute looks, with some exceptions, for subjects of taxation only to annual gains, profits and income."

And again, "The mere fact that property has advanced in value between the date
2799 of its acquisition and sale does not authorize the imposition of a tax on the mount of the advance. Mere advance in value in no sense constitutes the gains, profits, or income specified by the statute. It constitutes and can be treated merely as increase of capital." This case has not been since questioned or modified.

The Government feels the impediment of the case and attempts to confine its ruling
2800 to the exact letter of the Act of March 2, 1867, and thereby distinguish that act from the act of 1913 and give to the latter something of retrospective effect. Opposed to this there is a presumption, resistless except against an intention imperatively clear. The Government, however, makes its view depend upon disputable differences between certain words of the two acts. It urges that the act of 1913 makes the income taxed one "arising or accruing" in the preceding calendar year, while the act of 1867 makes the income one "derived." Granting that there is a shade of difference between the words, it cannot be granted that Congress made that shade a criterion of intention and committed the construction of its legislation to the disputes of purists. Besides, the contention of the Government does not reach the principle of *Gray* v. *Darlington*, which is that the gradual advance in the value of property during a series of years in no just sense can be ascribed to a particular year, not therefore as "arising or accruing," to meet the challenge of the words, in the last one of the years, as the Government contends, and taxable as income for that year or when turned into cash. Indeed, the case decides that such advance in value is not income at all, but merely increase of capital and not subject to a tax as income.

We concur, therefore, in the second proposition of the Circuit Court of Appeals
2801 as well as in the first and affirm the judgment.

Mr. Justice Brandeis and Mr. Justice Clarke concur in the result.

Peabody vs. Eisner.
(247 U. S. 347.)

2802 The appended decision of the United States Supreme Court in the case of Charles A. Peabody v. Mark Eisner, as collector of internal revenue, is published for the informaion of internal-revenue officers and others concerned. (T. D. 2732, June 11, 1918.)

(June 3, 1918.)

Mr. Justice Pitney delivered the opinion of the Court.

2803 This case arose under the Federal Income Tax Act of October 3, 1913 (Ch. 16, 38 Stat. 114, 166). The controversy is over the first cause of action set up by plaintiff in error in a suit against the collector for the recovery of an additional tax exacted in respect of a certain dividend received by plaintiff in the year 1914, the facts being as follows: On and prior to March 1, 1913, and thenceforward until payment of the dividend in question, petitioner was owner of 1,100 shares (out of a total of 2,000,000 shares outstanding) of common stock of the Union Pacific Railroad Company, of the par value of $100 each, and during the same period the company had large holdings of the common and preferred stocks of the Baltimore & Ohio Railroad Company. On March 2, 1914, the Union Pacific declared and paid an extra dividend upon each share of its common stock, amounting to $3 in cash, $12 in par value of preferred stock of the Baltimore & Ohio, and $22.50 in par value of the common stock of the same company; the result being that petitioner received as his dividend upon his holding of Union Pacific common stock $3,300 in cash, 132 shares of Baltimore & Ohio preferred and 247½ shares of Baltimore & Ohio common stock. In his income return for 1914 he included as taxable income $4.12 per share of this dividend, or $4,532 in all, and paid his tax upon the basis of this return. Afterwards he was subject to additional assessment upon a valuation of the balance of his dividend, and this, having been paid under protest, is the subject of the present suit, the theory of which is that the entire earnings, income, gains, and profits from all sources realized by the Union

Pacific Railroad Company from March 1, 1913, to March 2, 1914, remaining after the payment of prior charges did not exceed $4.12 per share of the Union Pacific common stock, and that the cash and Baltimore & Ohio stock disposed of in the extra dividend (so far as they exceeded the value of $4.12 per share of Union Pacific) did not constitute a gain, profit, or income of the Union Pacific, and therefore did not constitute a gain, profit, or income of the plaintiff arising or accruing either in or for the year 1914 or for any period subsequent to March 1, 1913, the date when the Income Tax Law took effect. The District Court overruled this contention upon the authority of *Southern Pacific Co.* v. *Lowe, Collector*, 238 Fed. Rep. 847, and *Towne* v. *Eisner, Colletcor*, 242 Fed. Rep. 702. The latter case has since been reversed (245 U. S. 418), but only upon the ground that it related to a stock dividend which in fact took nothing from the property of the corporation and added nothing to the interest of the shareholder, but merely changed the evidence which represented that interest. *Southern Pacific Co.* v. *Lowe, Collector*, has been reversed this day, *ante* ¶2804, but only upon the ground that the Central Pacific Railway Company, which paid the dividend, and the Southern Pacific Company, which received it, were in substance identical corporations because of the complete ownership and control which the latter possessed over the former as stockholder and in other capacities, so that while the two companies were separate legal entities, yet in fact and for all practical purposes the former was but a part of the latter, acting merely as its agent and subject in all things to its direction and control; and for the further reason that the funds represented by the dividend were in the actual possession and control of the Southern Pacific Company as well before as after the declaration of the dividend. In this case the plaintiff in error stands in the position of the ordinary stockholder, whose interest in the accumulated earnings and surplus of the company are not the same before as after the declaration of a dividend; his right being merely to have the assets devoted to the proper business of the corporation and to receive from the current earnings or accumulated surplus such dividends as the directors in their discretion may declare; and without right or power on his part to control that discretion. ¶It hardly is necessary to say that this case is not ruled by our decision in *Towne* v. *Eisner*, since the dividend of Baltimore & Ohio shares was not a stock dividend but a distribution in *specie* of a portion of the assets of the Union Pacific, and is to be governed for all present purposes by the same rule applicable to the distribution of a like value in money. It is controlled by *Lynch, Collector* v. *Hornby*, this day decided, *ante*, ¶2763.

Judgment Affirmed.

Southern Pacific Company vs. Lowe.
(247 U. S. 330.)

2804 The appended decision of the United States Supreme Court in the case of Southern Pacific Co. v. John Z. Lowe, Jr., as collector of internal revenue, is published for the information of internal-revenue officers and others concerned. (T. D. 2730, June 11, 1918.)

(June 3, 1918.)

Mr. Justice Pitney delivered the opinion of the Court.

This case presents a question arising under the Federal Income Tax Act of October 3,
2805 1913 (Ch. 16, 38 Stat. 114, 166). Suit was brought by plaintiff in error against the Collector to recover taxes assessed against it and paid under protest. There were two causes of action, of which only the second went to trial, it having been stipulated that the trial of the other might be postponed until the final determination of this one. So far as it is presented to us, the suit is an effort to recover a tax imposed upon certain dividends upon stock, in form received by the plaintiff from another corporation in the early part of the year 1914, and alleged by the plaintiff to have been paid out of a surplus accumulated not only prior to the effective date of the Act but prior to the adoption of the Sixteenth Amendment to the Constitution of the United States. The District Court directed a verdict and judgment in favor of the Collector, 238 Fed. Rep. 847, and the case comes here by direct writ of error under sec. 238, Judicial Code, because of the constitutional question. That our jurisdiction was properly invoked is settled by *Towne* v. *Eisner*, 245 U. S. 418, 425.

The case was submitted at the same time with several other cases arising under the
2806 same Act and decided this day, viz., *Lynch, Collector* v. *Turrish, ante*, ¶2776, *Lynch, Collector* v. *Hornby, post*, ¶2763, and *Peabody* v. *Eisner, Collector, post*, ¶2802.

The material facts are as follows: Prior to January 1, 1913, and at all times material
2807 to the case, plaintiff, a corporation organized under the laws of the State of Kentucky, owned all the capital stock of the Central Pacific Railway Company, a corporation of the State of Utah, including the stock registered in the names of the directors.*

*There was another question, concerning a dividend paid by the Reward Oil Company, whose stock likewise was owned by the Southern Pacific Company, but the contention of plaintiff in error respecting this item has been abandoned.

This situation existed continuously from the incorporation of the Railway Company in the year 1899. That company is the successor of the Central Pacific Railroad Company and acquired all of its properties, which constitute a part of a large system of railways owned or controlled by the Southern Pacific Company. The latter company, besides being sole stockholder, was in the actual physical possession of the railroads and all other assets of the Railway Company, and in charge of its operations, which were conducted in accordance with the terms of a lease made by the predecessor company to the Southern Pacific and assumed by the Railway Company, the effect of which was that the Southern Pacific should pay to the lessor company $10,000 per annum for organization expenses, should operate the railroads, branches, and leased lines belonging to the lessor, and account annually for the net earnings, and if these exceeded 6 per cent on the existing capital stock of the lessor the lessee should retain to itself one-half of the excess; advances by the lessee for account of the lessor were to bear lawful interest and the lessor was to be entitled at any time and from time to time to refund to itself its advances and interest out of any net earnings which might be in its hands. The provisions of the lease were observed by both corporations for bookkeeping purposes. The Southern Pacific acted as cashier and banker for the entire system; the Central Pacific kept no bank account, its earnings being deposited with the bank account of the Southern Pacific; and if the Central Pacific needed money for additions and betterments or for making up of a deficit of current earnings, the necessary funds were advanced by the Southern Pacific. As a result of these operations and of the conversion of certain capital assets of the Central Pacific Company, that company showed upon its books a large surplus accumulated prior to January 1, 1913, principally in the form of a debit against the Southern Pacific, which at the same time, as sole stockholder, was entitled to any and all dividends that might be declared, and being in control of the board of directors was able to and did control the dividend policy. The dividends in question were declared and paid during the first six months of the year 1914 out of this surplus of the Central Pacific accumulated prior to January 1, 1913; but the payment was only constructive, being carried into effect by bookkeeping entries which simply reduced the apparent surplus of the Central Pacific and reduced the apparent indebtedness of the Southern Pacific to the Central Pacific by precisely the amount of the dividends.

The question is whether the dividends received under these circumstances and
2808 in this manner by the Southern Pacific Company were taxable as income of that company under the Income Tax Act of 1913.*

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*In addition, a question was made in the District Court as to a special dividend declared by the Central Pacific out of the proceeds of sale of certain land on Long Island, taken in satisfaction of a debt and sold in December, 1913. As to this, however, no argument is submitted by plaintiff in error, the facts are not clear, and we pass it without consideration.

The Act provides in Section II, Paragraph A, Subdivision 1 (38 Stat. 166): "That
2809 there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year" to every person residing in the United States a tax of 1 per centum per annum, with exceptions not now material. By Paragraph G (a) (p. 172), it is provided: "That the normal tax hereinbefore imposed upon individuals [1 per cent.] likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation * * * organized in the United States," with other provisions not now material.

2810 It is provided in Paragraph G (b), as to domestic corporations, that such net income shall be ascertained by deducting from the gross amount of the income of the corporation (1) ordinary and necessary expenses paid within the year in the maintenace and operation of its business and properties, including rentals and the like; (2) losses sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines a certain allowance for depletion of ores and other natural deposits; (3) interest accrued and paid within the year upon indebtedness of the corporation, within prescribed limits; (4) national and state taxes paid. It will be observed that moneys received as dividends upon the stock of other corporations are not deducted, as they are in computing the income of individuals for the purpose of the normal tax under this Act (p. 167), and as they were in computing the income of the corporation under the Excise Tax Act of August 5, 1909 (Ch. 6, 36 Stat. 11, 113, Sec. 38).

By Paragraph G (c), the tax upon corporations is to be computed upon the entire
2811 net income accrued within each calendar year, but for the year 1913 only upon the net income accrued from March 1 to December 31, to be ascertained by taking five-sixths of the entire net income for the calendar year.

The purpose to refrain from taxing income that accrued prior to March 1, 1913,
2812 and to exclude from consideration in making the computation any income that accrued in a preceding calendar year, is made plain by the provision last referred to; indeed, the Sixteenth Amendment, under which for the first time Congress was authorized to tax income from property without apportioning the tax among the States according to population, received the approval of the requisite number of States only in February, 1913. *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, 581; 158 U. S. 601, 637; *Brushaber* v. *Union Pacific R. R.*, 240 U. S. 1, 16.

We must reject in this case, as we have rejected in cases arising under the Corpora-
2813 tion Excise Tax Act of 1909 (*Doyle, Collector* v. *Mitchell Brothers Co.* and *Hays, Collector* v. *Gauley Mountain Coal Co.*, decided May 20, 1918), the broad contention submitted in behalf of the Government that all receipts—everything that comes in—are income within the proper definition of the term "gross income," and that the entire proceeds of a conversion of capital assets, in whatever form and under whatever circumstances accomplished, should be treated as gross income. Certainly the term "income" has no broader meaning in the 1913 Act than in that of 1909 (see *Stratton's Independence* v. *Howbert*, 231 U. S. 399, 416, 417), and for the present purpose we assume there is no difference in its meaning as used in the two Acts. This being so, we are bound to consider accumulations that accrued to a corporation prior to January 1, 1913, as being capital, not income, for the purposes of the Act. And we perceive no adequate ground for a distinction, in this regard, between an accumulation of surplus earnings, and the increment due to an appreciation in value of the assets of the taxpayer.

That the dividends in question were paid out of a surplus that accrued to the
2814 Central Pacific prior to January 1, 1913, is undisputed; and we deem it to be equally clear that this surplus accrued to the Southern Pacific Company prior to that date, in every substantial sense pertinent to the present inquiry, and hence underwent nothing more than a change of form when the dividends were declared.

We do not rest this upon the view that for the purposes of the Act of 1913 stock-
2815 holders in the ordinary case have the same interest in the accumulated earnings of the company before as after the declaration of dividends. The act is quite different in this respect from the Income Tax Act of June 30, 1864 (Ch. 173, 13 Stat. 223, 281, 282), under which this court held, in *Collector* v. *Hubbard*, 12 Wall. 1, 16, that an individual was taxable upon his proportion of the earnings of the corporation although not declared as dividends. That decision was based upon the very special language of a clause of Sec. 117 of the Act (13 Stat. 282) that "the gains and profits of all companies, whether incorporated or partnership, other than the companies specified in this section, shall be included in estimating the annual gains, profits, or income of any person entitled to the same, whether divided or otherwise." The Act of 1913 contains no similar language, but on the contrary deals with dividends as a particular item of income, leaving them free from the normal tax imposed upon individuals, subjecting them to the graduated surtaxes only when received as dividends (38 Stat. 167, Paragraph B), and subjecting the interest of any individual shareholder in the undivided gains and profits of his corporation to these taxes only in case the company is formed or fraudulently availed of for the purpose of preventing the imposition of such tax by permitting gains and profits to accumulate instead of being divided or distributed*. Our view of the effect of this Act upon dividends received by the ordinary stockholder after it took effect but paid out of a surplus that accrued to the corporation before that event, is set forth in *Lynch, Collector* v. *Hornby, post*, ¶2763, decided this day.

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* "For the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided, or distributed, whether divided or distributed or not, of all corporations, joint-stock companies, or associations however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed; and the fact that any such corporation * * * is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business shall be *prima facie* evidence of a fraudulent purpose to escape such tax; but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable for the purposes of the business." (38 Stat. 166, 167.)

We base our conclusion in the present case upon the view that it was the purpose
2816 and intent of Congress, while taxing "the entire net income arising or accruing from all sources" during each year commencing with the first day of March, 1913, to refrain from taxing that which, in mere form only, bore the appearance of income

accruing after that date, while in truth and in substance it accrued before; and upon the fact that the Central Pacific and the Southern Pacific were in substance identical because of the complete ownership and control which the latter possessed over the former, as stockholder and in other capacities. While the two companies were separate legal entities, yet in fact, and for all practical purposes they were merged, the former being but a part of the latter, acting merely as its agent and subject in all things to its proper direction and control. And besides, the funds represented by the dividends were in the actual possession and control of the Southern Pacific as well before as after the declaration of the dividends. The fact that the books were kept in accordance with the provisions of the lease, so that these funds appeared upon the account as an indebtedness of the lessee to the lessor, cannot be controlling, in view of the practical identity between lessor and lessee. Aside from the interests of creditors and the public—and there is nothing to suggest that the interests of either were concerned in the disposition of the surplus of the Central Pacific—the Southern Pacific was entitled to dispose of the matter as it saw fit. There is no question of there being a surplus to warrant the dividends at the time they were made, hence any speculation as to what might have happened in case of financial reverses that did not occur is beside the mark.

It is true that in ordinary cases the mere accumulation of an adequate surplus **2817** does not entitle a stockholder to dividends until the directors in their discretion declare them. *New York, etc., Railroad* v. *Nickals*, 119 U. S. 296, 306; *Gibbons* v. *Mahan*, 136 U. S. 549, 558. And see *Humphreys* v. *McKissock*, 140 U. S. 304, 312. But this is not the ordinary case. In fact the discretion of the directors was affirmatively exercised by declaring dividends out of the surplus that was accumulated prior to January 1, 1913; it does not appear that any other fair exercise of discretion was open; and the complete ownership and right of control of the Southern Pacific at all times material makes it a matter of indifference whether the vote was at one time or another. Under the circumstances, the entire matter of the declaration and payment of the dividends was a paper transaction to bring the books into accord with the acknowledged rights of the Southern Pacific; and so far as the dividends represented the surplus of the Central Pacific that accumulated prior to January 1, 1913, they were not taxable as income of the Southern Pacific within the true intent and meaning of the Act of 1913.

The case turns upon its very peculiar facts, and is distinguishable from others **2818** in which the question of the identity of a controlling stockholder with his corporation has been raised. *Pullman Car Co.* v. *Missouri Pacific Co.*, 115 U. S. 587, 596; *Peterson* v. *Chicago, Rock Island & Pacific Ry.*, 205 U. S. 364, 391.

Judgment reversed, and the cause remanded for further proceedings in conformity with this opinion.

Mr. Justice Clarke dissents.

Gulf Oil Corporation vs. Lewellyn.

(December 9, 1918.)

Mr. Justice Holmes delivered the opinion of the Court.

The appended decision of the United States Supreme Court in the case of the **2819** Gulf Oil Corporation, petitioner, v. C. G. Lewellyn, Collector of Internal Revenue for the 23rd District of Pennsylvania, is published for the information of Internal Revenue officers and others concerned. (T. D. 2783, Jan. 7, 1919.)

2820 This is a suit to recover a tax levied upon certain dividends as income, under the Act of October 3, 1913, c. 16, Section II. 38 Stat. 114, 166. The District Court gave judgment for the plaintiff, 242 Fed. Rep. 709, but this judgment was reversed by the Circuit Court of Appeals. 245 Fed. Rep. 1. 158 C. C. A. 1.

2821 The facts may be abridged from the findings below as follows: The petitioner was a holding company owning all the stock in the other corporations concerned except the qualifying shares held by directors. These companies with others constituted a single enterprise, carried on by the petitioner, of producing, buying, transporting, refining and selling oil. The subsidiary companies had retained their earnings, although making some loans *inter se*, and all their funds were invested in properties or actually required to carry on the business, so that the debtor companies had no money available to pay their debts. In January, 1913, the petitioner decided to take over the previously accumulated earnings and surplus and did so in that year by votes of the companies that it controlled. But, disregarding the forms gone through, the result was merely that the petitioner became the holder of the debts previously due from one of its companies to another. It was no richer than before, but its property now was represented by stock in and debts due from its subsidiaries, whereas formerly it was represented by the stock alone, the change being effected by entries upon the respective companies' books. The earnings thus transferred had been accumulated and had been used as capital before the taxing year. *Lynch* v. *Turrish*, 247 U. S. 221, 228 [¶2776].

2822 We are of opinion that the decision of the District Court was right. It is true that the petitioner and its subsidiaries were distinct beings in contemplation of law, but the facts that they were related as parts of one enterprise, all owned by the petitioner, that the debts were all enterprise debts due to members, and that the dividend represented earnings that had been made in former years and that practically had been converted into capital, unite to convince us that the transaction should be regarded as bookkeeping rather than as 'dividends declared and paid in the ordinary course by a corporation.' *Lynch* v. *Hornby*, 247 U. S. 339, 346 [¶2763]. The petitioner did not itself do the business of its subsidiaries and have possession of their property as in *Southern Pacific Co.* v. *Lowe*, 247 U. S. 330 [¶2804], but the principle of that case must be taken to cover this. By Section II, G, (c), 38 Stat. 174, and S, *id.* 202, the tax from January 1 to February 28, 1913, is levied as a special excise tax, but in view of our decision that the dividends here concerned were not income it is unnecessary to discuss the further question that has been raised under the latter clause as to the effect of the fact that excise taxes upon the subsidiary corporations had been paid.

2823 Law ¶469. **General Effective Date of the Revenue Act of 1918 of which Title II Relates to "Income Tax."**—"Sec. 1409. That unless otherwise herein specially provided, this Act shall take effect on the day following its passage [i. e., approval by the President]."

2824 Approved by the President, February 24, 1919, at 6.55 P. M.

2825 For ¶2825 see page 305.

INSERT THIS SHEET TO FACE PAGE 300.

Guide to Article Numbers and Law Section numbers referred to in Regulations No. 45, Revised.

(See other side.)

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Insert this sheet immediately following the blue sheet now in the binder, facing page 300.

The Corporation Trust Company's

1913-1919

INCOME TAX SERVICE

PART II.

1919.

PART I, PART II-A, PART III, AND PART IV

of

REGULATIONS No. 45, REVISED

RELATING TO THE

INCOME TAX

under

THE REVENUE ACT OF 1918.

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NOTE.—Differences between the preliminary edition and the present revised and enlarged edition of Regulation No. 45, Parts I, II-A, III, and IV, are shown by printing in brackets [ ] those matters which were in the old but are not in the new edition, and by putting in *italics* those matters which are new to the revised edition. Otherwise the two editions are the same, except that when references in the body of paragraphs have been changed the *old* reference numbers are not shown. Added paragraphs have been designated by sub-paragraph letters, as 3079a, 3080a, etc., so that, in the main, the old paragraphs, whether amended or not, retain their original bold face designations. Thus, the cross references to Regulations No. 45, in other parts of the Service, either in print or in pencil or ink, still apply.

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REGULATIONS NO. 45, REVISED.

PART I

INCOME TAX ON INDIVIDUALS

NORMAL TAX

2825 **Article 1. Income Tax on Individuals.**—The statute imposes an
75 income tax on individuals, including a normal tax and a surtax.
471 See section 211 of the statute. The tax is upon net income, as defined in the statute, after deducting from gross income, as defined in the statute, the allowable deductions. See sections 212, 213, 214 and 215. In certain cases credits are allowed against net income and against the amount of the tax. See sections 216 and 222. Special provisions of the statute deal with the effect of the tax on nonresident alien individuals, partnerships and personal service corporations, estates and trusts, and the stockholders of corporations which unreasonably accumulate their profits. See sections 217, 218, 219, and 220. The tax is payable upon the basis of returns rendered by the persons liable thereto, except that in some instances it is to be paid at the source of the income. See sections 221, 223, 224, 225, 226, 227 and 228. The statute also imposes an income tax at a fixed rate and a war profits and excess profits tax on

corporations. See Part II of the regulations. For administrative provisions, and for definitions and general provisions, see Parts III and IV of the regulations.

2826 **Art. 2. Normal Tax.**—For the calendar year 1918 the normal income tax on individual citizens or residents of the United States is at the rate of 6 per cent upon the first $4,000 of net income subject to the normal tax and 12 per cent upon the excess over that amount, and for the calendar year 1919 and subsequent years is at the rate of 4 per cent upon the first $4,000 and 8 per cent upon the excess over that amount. The lower rate on the first $4,000 applies to each separate individual, whether married or unmarried, and should not be confused with the joint exemption granted married persons. In the case of nonresident alien individuals the normal tax for 1918 is 12 per cent and for subsequent years 8 per cent. In order to determine the income to which the normal tax is applied, the net income, as defined in section 212 of the statute and articles 21-26 of the regulations, is first entitled to the credits and exemptions specified in section 216 of the statute and articles 301-307.

2827 **Art. 3. Persons Liable to Tax.**—Every citizen of the United States, wherever resident, is liable to the tax. It makes no difference that he may own no assets within the United States and may receive no income from sources within the United States. Every resident alien individual is liable to the tax, even though his income is wholly from sources outside the United States. Every nonresident alien individual is liable to the tax on his income from sources within the United States. *See section* 213 (*c*) *of the statute and articles* 91-93. Estates and trusts are also subject to the tax. See section 219 of the statute and articles 341-346.

2828 **Art. 4. Who Is a Citizen.**—Every person born in the United States subject to its jurisdiction, or naturalized in the United States, is a citizen. When any naturalized citizen has left the United States and resided for two years in the foreign country from which he came, or for five years in any other foreign country, he is presumed to have lost his American citizenship; but this presumption does not apply to residence abroad while the United States is at war. An Italian, who has come to the United States and filed his declaration of intention of becoming a citizen, but who has not yet received his final citizenship papers, is an alien. A Swede who, after having come to the United States and become naturalized here, returned to Sweden and resided there for two years prior to April 6, 1917, is presumed to be once more an alien. On the other hand, an individual born in the United States of citizen or resident alien parents, who has long since moved to a foreign country and established a domicile there, but who has never been naturalized therein or taken an oath of allegiance thereto, is still a citizen of the United States. For the difference between resident alien individuals and nonresident alien individuals, see articles 312-315.

SURTAX.

2829 **Art. 11. Surtax.**—In addition to the normal tax a surtax is im-
80 posed at the rates specified in the statute upon the net income of
736 every individual, resident or nonresident. *See articles* 2-4. In determining the taxable net income for the purpose of the surtax, the credits provided by section 216 of the statute in the case of the normal tax are nor applicable.

2830 **Art. 12. Computation of Surtax.**—The following table shows the surtax on net incomes of the specified amounts. In each instance the first figure of net income in the net income column is to be excluded and the second figure included. The percentage given opposite applies to the excess of income over the first figure in the net income column, and the sum in the next column is the tax on the entire difference between the first figure and the second figure in the net income column. The final column gives the total surtax on a net income equal to the second figure in the net income column.

Net Income	Per Cent	Surtax	Total surtax
$5,000 to $6,000	1	$10	$10
$6,000 to $8,000	2	40	50
$8,000 to $10,000	3	60	110
$10,000 to $12,000	4	80	190
$12,000 to $14,000	5	100	290
$14,000 to $16,000	6	120	410
$16,000 to $18,000	7	140	550
$18,000 to $20,000	8	160	710
$20,000 to $22,000	9	180	890
$22,000 to $24,000	10	200	1,090
$24,000 to $26,000	11	220	1,310
$26,000 to $28,000	12	240	1,550
$28,000 to $30,000	13	260	1,810
$30,000 to $32,000	14	280	2,090
$32,000 to $34,000	15	300	2,390
$34,000 to $36,000	16	320	2,710
$36,000 to $38,000	17	340	3,050
$38,000 to $40,000	18	360	3,410
$40,000 to $42,000	19	380	3,790
$42,000 to $44,000	20	400	4,190
$44,000 to $46,000	21	420	4,610
$46,000 to $48,000	22	440	5,050
$48,000 to $50,000	23	460	5,510
$50,000 to $52,000	24	480	5,990
$52,000 to $54,000	25	500	6,490
$54,000 to $56,000	26	520	7,010
$56,000 to $58,000	27	540	7,550
$58,000 to $60,000	28	560	8,110
$60,000 to $62,000	29	580	8,690
$62,000 to $64,000	30	600	9,290
$64,000 to $66,000	31	620	9,910
$66,000 to $68,000	32	640	10,550
$68,000 to $70,000	33	660	11,210
$70,000 to $72,000	34	680	11,890
$72,000 to $74,000	35	700	12,590
$74,000 to $76,000	36	720	13,310
$76,000 to $78,000	37	740	14,050
$78,000 to $80,000	38	760	14,810
$80,000 to $82,000	39	780	15,590
$82,000 to $84,000	40	800	16,390
$84,000 to $86,000	41	820	17,210
$86,000 to $88,000	42	840	18,050
$88,000 to $90,000	43	860	18,910
$90,000 to $92,000	44	880	19,790
$92,000 to $94,000	45	900	20,690

Net Income	Per cent	Surtax	Total Surtax
$94,000 to $96,000	46	920	21,610
$96,000 to $98,000	47	940	22,550
$98,000 to $100,000	48	960	23,510
$100,000 to $150,000	52	26,000	49,510
$150,000 to $200,000	56	28,000	77,510
$200,000 to $300,000	60	60,000	137,510
$300,000 to $500,000	63	126,000	263,510
$500,000 to $1,000,000	64	320,000	583,510
$1,000,000 up	65		

The surtax for any amount of net income not shown in the above table is computed by adding to the total surtax for the largest amount shown which is less than the income the surtax upon the excess over that amount at the rate indicated in the table. For example, if the amount of net income is $63,128, the surtax is the sum of $8,690 (the surtax upon $62,000 as shown by the table) plus 30 per cent of $1,128, or $338.40, making a total surtax of $9,028.40.

2831 **Art. 13. Surtax on the Sale of Mineral Deposits.**—Where the
82 taxpayer by prospecting and locating claims, or by exploring and
738 discovering undeveloped claims, has demonstrated the principal value of mines, oil or gas wells, which prior to his efforts had a merely nominal value, the portion of the surtax attributable to a sale of such property or of the taxpayer's interest therein shall not exceed 20 per cent of the selling price. Exploration work alone without discovery is not sufficient to bring a case within this provision. Shares of stock in a corporation owning mines, oil or gas wells do not constitute an interest in such property. To determine the application of this provision to a particular case, the taxpayer should first compute the surtax in the ordinary way upon his net income, including his net income from any such sale. The proportion of the surtax indicated by the ratio which the taxpayer's *net income* [profit] from the sale of the property, *computed as prescribed in article* 715, bears to [the sum of] his total *net* income [plus the general deductions not chargeable against any particular item of gross income] is the portion of the surtax attributable to such sale, and if it exceeds 20 per cent of the selling price of the property such portion of the surtax shall be reduced to that amount. *See articles* 219-221.

NET INCOME DEFINED.

2832 **Art. 21. Meaning of Net Income.**—The tax imposed by the
83 statute is upon income. In the computation of the tax various
754 classes of income must be considered: (*a*) Income (in the broad sense), meaning all wealth which flows in to the taxpayer other than as a mere return of capital. It includes the forms of income specifically described as gains and profits, including gains derived from the sale or other disposition of capital assets. It is not limited to cash alone, for the statute recognizes as income-determining factors other items, among which are inventories, accounts receivable, property exhaustion and accounts payable for expenses incurred. See sections 202, 203, 213 and 214 of the statute. (*b*) Gross income, meaning income (in the broad sense) less income which is by statutory provision or otherwise exempt from the tax imposed by the statute. See section 213 *and articles* 71-86. (*c*) Net income, meaning gross

income less statutory deductions. The statutory deductions are in general, though not exclusively, expenditures, other than capital expenditures, connected with the production of income. See sections 214 and 215 *and the articles thereunder.* (*d*) Net income less credits. See section 216 and articles 301-307. The surtax is imposed upon net income; the normal tax upon net income less credits. Though taxable net income is wholly a statutory conception it follows, subject to certain modifications as to exemptions and as to some of the deductions, the lines of commercial usage. *Subject to these modifications* statutory "net income" is [subject to these modifications] commercial "net income." This appears from the fact that ordinarily it is to be computed in accordance with the method of accounting regularly employed in keeping the books of the taxpayer. [For instances in which net income is not to be computed in accordance with the taxpayer's method of accounting see articles 22 and 23.] As to net income of corporations see section 232 [236 of the statute] *and article* 531.

2833 Art. 22. **Computation of Net Income.**—Net income must be computed with respect to a fixed period. *Usually* [Ordinarily] that period is twelve months and is known as the taxable year. Items of income and of expenditures which as gross income and deductions are elements in the computation of net income need not be in the form of cash. It is sufficient that such items, if otherwise properly included in the computation, can be valued in terms of money. The time as of which any item of gross income or any deduction is to be accounted for must be determined in the light of the fundamental rule that the computation shall be made in such a manner as clearly reflects the taxpayer's income. If the method of accounting regularly employed by him in keeping his books clearly reflects his income, it is to be followed with respect to the time as of which items of gross income and deductions are to be accounted for. If the taxpayer does not regularly employ a method of accounting which clearly reflects his income, the computation shall be made in such manner as in the opinion of the Commissioner clearly reflects it.

2834 Art. 23. **Bases of Computation.**—Approved standard methods of accounting will ordinarily be regarded as clearly reflecting income. A method of accounting will not, however, be regarded as clearly reflecting income unless all items of gross income and all deductions are treated with reasonable consistency. See section 200 of the statute for definitions of "paid," "paid or accrued," and "paid or incurred." All items of gross income shall be included in the gross income for the taxable year in which they are received by the taxpayer, and deductions taken accordingly, unless in order clearly to reflect income such amounts are to be properly accounted for as of a different period. See section 213 (*a*) of the statute. A taxpayer is deemed to have received items of gross income which have been credited *to* or *set apart for* [made available to] him without restriction. *See article* 53. On the other hand, appreciation in value of property is not even an accrual of income to a taxpayer prior to the realization of such appreciation through conversion of the property. *The return of income shall in every case be made on the basis clearly reflecting the income, including such items of income and deductions as properly would have been included in the return for the preceding taxable year had the present basis been used, but which were not so included, and excluding such items of income and deductions as would have been excluded from the return for the preceding taxable year had the present basis been used, but which were in fact included. A separate statement shall be attached to the return showing in detail all such items and the reasons*

why they were excluded or included in the return for the preceding taxable year. If in the opinion of the Commissioner the net effect of such items upon the net income for the taxable year indicates that the returns for any previous years did not approximately reflect the true income for such years, amended returns for such years may be required.

2835 **Art. 24. Methods of Accounting.**—It is recognized that no uniform method of accounting can be prescribed for all taxpayers, and the law contemplates that each taxpayer shall adopt such forms and systems of accounting as are in his judgment best suited to his purpose. Each taxpayer is required by law to make a return of his true income. He must, therefore, maintain such accounting records as will enable him to do so. See section 1305 of the statute and article 1711. Among the essentials are the following:

2836 (1) In all cases in which the production, purchase or sale of merchandise of any kind is an income-producing factor inventories of the merchandise on hand (including finished goods, work in process, raw materials and supplies) should be taken at the beginning and end of the year and used in computing the net income of the year;

2837 (2) Expenditures made during the year should be properly classified as between capital and income, that is to say, that expenditures for items of plant, equipment, etc., which have a useful life extending substantially beyond the year should be charged to a capital account and not to an expense account; and

2838 (3) In any case in which the cost of capital assets is being recovered through deductions for wear and tear, depletion or obsolescence any expenditure (other than ordinary repairs) made to restore the property or prolong its useful life should be charged against the property account or the appropriate reserve and not against current expenses.

2839 **Art. 25. Accounting Period.**—The return of a taxpayer is made and his income computed for his taxable year, which means his fiscal year, or the calendar year if he has not established a fiscal year. The term "fiscal year" means an accounting period of 12 months ending on the last day of any month other than December. No fiscal year will, however, be recognized unless before its close it was definitely established as an accounting period by the taxpayer and the books of such taxpayer were kept in accordance therewith. The taxable year 1918 is the calendar year 1918 or any fiscal year ending during the calendar year 1918. See section 200 of the statute. *A taxpayer having an existing accounting period which is a fiscal year within the meaning of the statute not only needs no permission to make his return on the basis of such a taxable year, but is required to do so, regardless of the former basis of rendering returns. A person having no such fiscal year must make return on the basis of the calendar year. The first return under the present statute of a taxpayer who has heretofore made return on a basis different from his accounting period will necessarily overlap his next previous return. For the method of adjusting the tax in such a case see section* 205 *of the statute and articles* 1621-1624. *Section* 226 *has no application to this situation.* [A taxpayer shall make his return for the taxable year 1918 on the basis of his annual accounting period (fiscal or calendar year), even though a part of such accounting period was included in a period for which he had previously made return. Thus an individual whose accounting period ended June 30, 1918, and who had previously made a return for the calendar year 1917, should make a complete return in accordance with the provisions of the statute for the twelve months ending June 30, 1918.

For adjustments to be made with respect to income included in both returns see section 205 of the statute and articles 1622 and 1624. A taxpayer making his first return for income tax shall make such return on the basis of his annual accounting period. See section 226 of the statute and article 431.] Except in the cases of a return for the taxable year 1918 and of a first return for income tax a taxpayer shall make his return on the basis (fiscal or calendar year) upon which he made his return for the taxable year immediately preceding unless, with the approval of the Commissioner, he has changed the basis of computing his net income.

2840 **Art. 26. Change in Accounting Period.**—If a taxpayer changes his accounting period, *and not merely his taxable year to conform with his existing accounting period*, he shall as soon as possible give [written notice] to the collector for transmission to the Commissioner *written notice* of such change and his reasons therefor. The Commissioner will not approve a change of the basis of computing net income unless such notice is given *at a time which is both* (*a*) at least 30 days before the due date of the taxpayer's return on the basis of his existing taxable year and (*b*) at least 30 days before the due date of his return on the basis of the proposed taxable year. If the change in the basis of computing the net income of the taxpayer is approved by the Commissioner, the taxpayer shall thereafter make his returns upon the basis of the new accounting period in accordance with the requirement of section 226 of the statute and his net income shall be computed as therein provided. See article 431.

GROSS INCOME DEFINED: INCLUSIONS

2841 **Art. 31. What Included in Gross Income.**—Gross income includes in general compensation for personal *and professional services*, [service,
88 professional and] business income, profits from sales of *and dealings*
763 *in* property, interest, rent, dividends, and gains, profits and income derived from any source whatever, unless exempt from tax by law. Profits derived from sales in foreign commerce are taxable. Income may be in the form of cash or of property *Dividends* (*other than stock dividends declared before November* 1, 1918, *and received before March* 27, 1919) *are taxed at the rates for the year in which paid. See section* 201 *of the statute and articles* 1541-1549. *The amount of income tax paid for a bondholder by an obligor pursuant to a tax-free covenant in its bonds is in the nature of additional interest paid the bondholder and must be included in his gross income. He is not however, entitled to deduct such income tax paid on his behalf See sections* 214 (*a*) (3) *and* 221 (*b*) *of the statute and articles* 565 *and* 566. *As to the basis for determining gain or loss from sales see section* 202 *and articles* 1561-1570. *As to the gross income of corporations see section* 223 *and articles* 541-550. [See sections 201 and 202 of the statute and articles 1541-1548 and 1561-1567.]

2842 **Art. 32. Compensation for Personal Services.**—Where no determination of compensation is had until the completion of the services, the amount received is [ordinarily] income for the calendar year of its determination [or receipt. Where services are paid for with something other than money, the fair market value of the thing taken in payment is the amount to be included as income. If the services were rendered at a stipulated price, in the absence of evidence to the contrary such price will be presumed to be the fair value of the compensation received]. Commissions paid salesmen, compensation for services on the basis of a percentage

of profits, commissions on insurance premiums, *tips*, retired pay of federal and other officers, and pensions or retiring allowances paid by the United States or private persons, are income to the recipients; as are also marriage fees, baptismal offerings, *sums paid for saying masses for the dead*, and *other* [so-called] gifts and contributions received by a clergyman, evangelist or religious worker for services rendered. *The salaries of federal officers and employees are subject to tax. But see article* 86. [Premiums paid by an employer on accident or health policies in favor of his employees as additional compensation of such employees are income to the employees. Compensation paid an employee of a corporation in its stock is to be treated as if the corporation sold the stock for its market value and paid the employee in cash. (*But see article* 33 *below.*)] See further articles 85 *and* 105-108.

2842a Art. 33. Compensation Paid Other than in Cash.—*Where services are paid for with something other than money, the fair market value of the thing taken in payment is the amount to be included as income. If the services were rendered at a stipulated price, in the absence of evidence to the contrary such price will be presumed to be the fair value of the compensation received. Compensation paid an employee of a corporation in its stock is to be treated as if the corporation sold the stock for its market value and paid the employee in cash. When living quarters such as camps are furnished to employees for the convenience of the employer, the ratable value need not be added to the cash compensation of the employee, but where a person receives as compensation for services rendered a salary and in addition thereto living quarters, the value to such person of the quarters furnished consitutes income subject to tax. Premiums paid by an employer on life, accident or health policies in favor of his employees as additional compensation of such employees are income to the employees.*

2842b Art. 34. Compensation Paid in Notes.—*Promissory notes received in payment for services, and not merely as security for such payment, constitute income to the amount of their fair market value. A taxpayer receiving as compensation a note regarded as good for its face value at maturity, but not bearing interest, may properly treat as income as of the time of receipt the fair discounted value of the note at such time. Thus, if it appears that such a note is or could be discounted on a six or seven per cent basis, the recipient may include such note in his gross income to the amount of its face value less discount computed at the prevailing rate for such transactions. If the payments due on a note so accounted for are met as they become due, there should be included as income in respect of each such payment so much thereof as represents recovery for the discount originally deducted.*

2842c Art. 35. Gross Income From Business.—*In the case of a manufacturing, merchandising or mining business "gross income" means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources. In determining the gross income subtractions should not be made for depreciation, depletion, selling expenses or losses, or for items not ordinarily used in computing the cost of goods sold. Gross income includes all amounts received by the taxpayer as allowances for amortization, from whatever source and by whatever name called. The allowance for amortization authorized by the statute must be taken by way of explicit dededuction from gross income. See section* 214 (*a*) (9) *and articles* 181-188. *See also article* 52.

2843 Art. 36 [Art. 33]. Long Term Contracts.—Persons engaged in contracting operations, who have uncompleted contracts, in some cases perhaps running for periods of several years, will be allowed to prepare

their returns so that the gross income will be arrived at on the basis of completed work; that is, on jobs which have been finally completed any and all moneys received in payment will be returned as income for the year in which the work was completed. If the gross income is arrived at by this method, the deduction from gross income should be limited to the expenditures made on account of such completed contracts. Or the percentage of profit from the contract may be estimated on the basis of percentage of completion, in which case the income to be returned each year during the performance of the contract will be computed upon the basis of the expenses incurred on such contract during the year; that is to say, if one-half of the estimated expenses necessary to the full performance of the contract are incurred during one year, one-half of the gross contract price should be returned as income for that year. Upon the completion of a contract if it is found that as a result of such estimate or apportionment the income of any year or years has been overstated or understated, the taxpayer should file amended returns for such year or years. *See section* 212 *of the statute and articles* 22–24.

2844 Art. 37 [Art. 34]. State Contracts.—Any profit received from a State or political subdivision thereof by an independent contractor is taxable income. Where warrants are issued by a city, town or other political subdivision of a State, and are accepted by the contractor in payment for public work done, the face value of such warrants must be returned as income. If for any reason the contractor upon conversion of the warrants into cash does not receive and can not recover the full face value of the warrants so returned, he may allowably deduct from gross income for the year in which the warrants are converted into cash any loss sustained [which will be measured by the difference between the face value of the warrants returned as income and the amount actually received for them when redeemed or disposed of].

2845 Art. 38 [Art. 35]. Gross Income of Farmers.—All gains, profits and income derived from the sale or exchange of farm products, whether produced on the farm or purchased and resold, shall be included in the return of income for the year in which the products were actually marketed and sold, unless an inventory is used. In case of the sale of machinery, and of animals purchased as draft or work animals or solely for breeding purposes and not for resale, any *excess* [increase] over the cost thereof reduced by all sums theretofore deducted for depreciation shall be included as gross income in preparing the taxpayer's return. Where farm produce is exchanged for merchandise, groceries or mill products, the market value of the article or product received in exchange is to be returned as income. Rents received in crop shares shall be returned as of the year in which the crop shares are reduced to money or a money equivalent. If a farmer is engaged in producing crops which take more than a year from the time of planting to the time of gathering and disposing, the income therefrom may be computed upon the crop basis; but in any such case the entire cost of producing the crop must be taken as a deduction in the year in which the gross income from the crop is realized. When live stock purchased is sold, its cost is to be deducted from the sales price in ascertaining the amount of gain or profit to be returned for tax purposes. If, however, an inventory [method of accounting] is used, the cost price of the article sold must not be taken as an additional deduction in the return of income, as such cost price will be reflected in the inventory. As herein used the term "farm" embraces the farm in the ordinarily accepted sense, and includes stock,

dairy, poultry, fruit and truck farms, also plantations, ranches and all land used for farming operations. All individuals, partnerships or corporations that cultivate, operate or manage farms for gain or profit, either as owners or tenants, are designated [as] farmers. A person cultivating or operating a farm for recreation or pleasure, the result of which is a continual loss from year to year, is not regarded as a farmer. See further articles 110, 145 and 171.

2846 Art. 39 [Art. 36]. Sale of Stock and Rights.—When shares of stock in a corporation are sold from lots purchased at different times and at different prices and the identity of the lots can not be determined, the stock sold shall be charged against the earliest purchases of such stock. The excess of the amount realized on the sale over the cost of the stock, or its fair market value as of March 1, 1913, if purchased before that date, will be the profit to be accounted for as income. In the case of stock received as a stock dividend, whether or not paid out of earnings or profits accrued since February 28, 1913, and in the case of stock in respect of which any such dividend was paid, the cost of each share of such stock shall be ascertained as specified in article 1547. Where common stock is received as a bonus with the purchase of preferred stock or bonds, the total purchase price shall be fairly apportioned between the stock and securities purchased for the purpose of determining the portion of the consideration attributable to each class of stock or securities and so representing its cost, but if that should be impracticable in any case, no profit on any subsequent sale of any part of the stock or securities will be realized until out of the proceeds of sales shall have been recovered the total cost. *See article* 1565. The entire amount realized from the sale of rights to subscribe for stock is income.

2847 Art. 40 [Art. 37]. Sale of Patents and Copyrights.—A taxpayer disposing of patents or copyrights by sale should determine the profit or loss arising therefrom by computing the difference between the selling price and the value as of March 1, 1913, if acquired prior to that date, or between the selling price and the cost, if acquired subsequently to that date. The profit or loss thus ascertained should be increased or decreased, as the case may be, by the amounts deducted on account of depreciation of such patents or copyrights since February 28, 1913, or since the date of *acquisition* [purchase] if [acquired] subsequently *thereto* [to that date]. See article 167.

2848 Art. 41 [Art. 38]. Sale of Good Will [and Trademarks].—Any profit or loss resulting from an investment in good will can be taken only when the business, or a part of it, to which the good will attaches is sold, in which case the profit or loss will be determined upon the basis of the cost of the assets, including good will, or their fair market value as of March 1, 1913, if acquired prior thereto. If nothing was paid for good will acquired after February 28, 1913, no deductible loss is possible, although, on the other hand, upon the sale of the business there may be a profit. It is immaterial that good will may never have been carried on the books as an asset, but the burden of proof is on the taxpayer to establish the cost or fair market value on March 1, 1913, of the good will sold.

2849 Art. 42 [Art. 39]. Sale of Personal Property on [the] Installment Plan.—Dealers in personal property ordinarily sell either for cash, or on the personal credit of the buyer, or on the installment plan. Occasionally a fourth type of sale is met with, in which the buyer makes an initial payment of such a substantial nature (for example, a payment of more

than 25 per cent) that the sale, though involving deferred payments, is not one on the installment plan. In sales on personal credit, and in the substantial payment type just mentioned, obligations of purchasers are to be regarded as the equivalent of cash, but a different rule applies to sales on the installment plan. Dealers in personal property who sell on the installment plan usually adopt one of four ways of protecting themselves in case of default: (*a*) through an agreement that title is to remain in the seller until the buyer has completely performed his part of the transaction; (*b*) by a form of contract in which title is conveyed to the purchaser immediately, but subject to a lien for the unpaid portion of the purchase price; (*c*) by a present transfer of title to the purchaser, who at the same time executes a reconveyance in the form of a chattel mortgage to the seller; or (*d*) by conveyance to a trustee pending performance of the contract and subject to its provisions. The general purpose and effect being the same in all of these plans, it is desirable that a uniformly applicable rule be established. The rule prescribed is that in the sale or contract for sale of personal property on the installment plan, whether or not title remains in the vendor until the property is fully paid for, the income to be returned by the vendor will be that proportion of each installment payment which the gross profit to be realized when the property is paid for bears to the gross contract price. *Such income may be ascertained by taking that proportion of the total payments received in the taxable year from installment sales (always including payments received in the taxable year on account of sales effected in earlier years as well as those effected in the taxable year) which the gross profit to be realized on the total installment sales made during the taxable year bears to the gross contract price of all such sales made during the taxable year. Where a change is made to this method of computing net income the taxpayer's balance sheet should be adjusted conformably as of the date when the change is effected.* If for any reason the vendee defaults in his installment payments and the vendor repossesses the property, the entire amount received on installment payments, less the profit already returned, will be income of the vendor for the year in which the property was repossessed, *and the property repossessed must be included in the inventory at its original cost to himself, less proper allowance for damage and use, if any.* If the vendor chooses as a matter of consistent practice to treat the obligations of purchasers as the equivalent of cash, such a course is permissible.

2850 Art. 43 [Art. 40]. Sale of Real Estate in Lots.—Where a tract of land is purchased with a view to dividing it into lots or parcels of ground to be sold as such, the entire *fair market* value as of March 1, 1913, or *the* cost, if acquired subsequently to that date, shall be equitably apportioned to the several lots or parcels and made a matter of record in the books of the taxpayer, to the end that any gain derived from the sale of any such lots or parcels may be returned as income for the year in which the sale was made. This rule contemplates that there will be a measure of gain or loss in every lot or parcel sold, and [does] not [contemplate] that the capital invested in the entire tract shall be extinguished before any taxable income shall be returned. The sale of each lot or parcel will be treated as a separate transaction and the gain or loss will be accounted for accordingly.

2851 Art. 44 [Art. 41]. Sale of Real Estate Involving Deferred Payments. —Deferred payment sales of real estate ordinarily fall into two classes when considered with respect to the terms of sale, as follows:

(1) Installment transactions, in which the initial payment is
2852 relatively small (generally less than one-fourth of the purchase

price) and the deferred payments usually numerous and of small amount. They include (*a*) sales where there is immediate transfer of title when a small initial payment is made, the seller being protected by a mortgage or other lien as to deferred payments, and (*b*) agreements of purchase and sale which contemplate that a conveyance is not to be made at the outset, but only after all or a substantial portion of the agreed installments have been paid.

(2) Deferred payment sales not on the installment plan, in which
2853 there is a substantial initial payment (ordinarily not less than one-fourth of the purchase price), deferred payments being secured by a mortgage or other lien. Such sales are distinguished from sales on the installment plan by the substantial character of the initial payment and also usually by a relatively small number of deferred payments.

In determining how these classes shall be treated in levying the
2854 income tax, the question in each case is whether the income to be reported for taxation shall be based only on amounts actually received in a taxing year, or on the entire consideration made up in part of agreements to pay in the future.

2855 **Art. 45 [Art. 42]. Sale of Real Estate on Installment Plan.**—In the two kinds of transactions included in class (1) in the foregoing article, installment obligations assumed by the buyer are not ordinarily to be regarded as the equivalent of cash, and the vendor may report as his income from such transactions in any year that proportion of each payment actually received in that year which the gross profit to be realized when the property is paid for bears to the gross contract price. If the return is made on this basis and the vendor repossesses the property after default by the buyer, retaining the previous payments, the entire amount of such payments, less the profit previously returned, will be income to the vendor and will be so returned for the year in which the property was repossessed, *and the property repossessed must be included in the inventory at its original cost to himself* (*less any depreciation as defined in articles* 161 *and* 162). If the taxpayer chooses as a matter of settled practice consistently followed to treat the obligations of the purchaser as equivalent to cash and to report the profit derived from the entire consideration, cash and deferred payments, as income for the year when the sale is made, this is permissible. If so treated the rule prescribed in article 46 will apply.

2856 **Art. 46 [Art. 43]. Deferred Payment Sales of Real Estate not on Installment Plan.**—In class (2) in the next to the last article the obligations assumed by the buyer are much better secured because of the margin afforded by the substantial first payment, and experience shows that the greater number of such sales are eventually carried out according to their terms. These obligations for deferred payments are therefore to be regarded as equivalent to cash, and the profit indicated by the entire consideration is taxable income for the year in which the initial payment was made and the obligations assumed. If the buyer defaults and the seller regains title to the land by agreement or process of law, retaining payments previously made, he may deduct from his gross income as a loss *in the year of repossession any excess of the amount previously reported as income over the amount actually received, and must include such real estate in his inventory at its original cost to himself* (*less any depreciation as defined in articles* 161 *and* 162) [such proportion of the defaulted payments as was previously returned as income, provided that so much of the selling price previously received as has not been reported as income is accounted for in the inventory of the property by deduction from the original cost]. *See article* 153.

2857 Art. 47 [Art. 44]. **Annuities and Insurance Policies.**—Annuities paid by religious, charitable and educational corporations under an annuity contract are subject to tax to the extent that the aggregate amount of the payments to the annuitant exceeds any amounts paid by him as consideration for the contract. An annuity charged upon devised land is income taxable to the annuitant, whether paid by the devisee out of the rents of the land or from other sources. The devisee is not required to return as taxable income the amount of rent paid to the annuitant, and he is not entitled to deduct from his taxable income any sums paid to the annuitant. Where an insured receives under life insurance, endowment or annuity contracts sums in excess of the premiums paid therefor, such excess is income for the year of its receipt. See article 72. Distributions on paid-up policies which are made out of earnings of the insurance company subject to tax are in the nature of corporate dividends and are income of an individual only for the purpose of the surtax.

2858 Art. 48 [Art. 45]. **Rent and Royalties.**—When improvements made by a lessee become part of the real estate, the value of such improvements upon the *expiration* [termination] of the *existing term of the* lease is income to the lessor. In general, sums paid by a tenant for the use of property, although to another than the landlord, are properly to be regarded as rent and constitute income of the landlord. See further article 109. Royalties on patents are income.

2859 [Art. 46. **Allocation of Income from Judgments.**—*See Art.* 52, ¶2862*b for content of this article and paragraph as originally printed.*]

2860 Art. 49 [Art. 47]. **Compensation for Loss.**—In the case of property which has been lost or destroyed in whole or in part through fire, storm, shipwreck or other casualty, or where the owner of property has lost or transferred title by reason of the exercise of the power of requisition or eminent domain, including cases where a voluntary transfer or conveyance is induced by reason of the fact that a technical requisition or condemnation proceeding is imminent, the amount received by the owner as compensation for the property may show an excess over the value of the property on March 1, 1913, or over its cost, if it was acquired after that date (after making proper provision in either case for depreciation to the date of the loss, damage or transfer). The transaction is not regarded as completed at this stage, however, if the taxpayer proceeds immediately in good faith to replace the property, or if he makes application to establish a replacement fund as provided in the following article. In such a case the gain, if any, is measured by the excess of the amount received over the amount actually and reasonably expended to replace or restore the property substantially in kind, exclusive of any expenditures for additions or betterments. The new or restored property effects a replacement in kind only to the extent that it serves the same purpose as the property which it replaces without added capacity or other element of additional value. Such new or restored property shall not be valued in the accounts of the taxpayer at an amount in excess of the cost or value at March 1, 1913, if acquired before that date (after making proper provision in either case for depreciation to the date of the loss, damage or transfer), of the original property, plus the cost of any actual additions and betterments. If the taxpayer does not elect to replace or restore the property, the transaction will then be deemed to be completed and the income shall be measured by the excess of the amount of the compensation received over the cost of the property or its actual

value at March 1, 1913, if acquired before that date (after making proper provision in either case for depreciation to the date of the loss, damage or transfer). See article 141. Articles 49 *and* 50 have no application to property which is voluntarily sold or disposed of.

2861 **Art. 50 [Art. 48]. Replacement Fund for Loss.**—In any case in
1840 which the taxpayer elects to replace or restore the lost, damaged or transferred property, but where it is not practicable to do so immediately, he may obtain permission to establish a replacement fund in his accounts in which the entire amount of the compensation so received shall be held, without deduction for the payment of any mortgage, and pending the disposition thereof the accounting for gain or loss thereupon may be deferred for a reasonable period of time, to be determined by the Commissioner. [*The following is a part of this paragraph in this revised edition.*]

2862 **[Art. 49. Application for Replacement Fund.—]** In *such* a case [specified in the preceding article] the taxpayer should make application to the Commissioner on form 1114 for permission to establish such a replacement fund and in his application should recite all the facts relating to the transaction and undertake that he will proceed as expeditiously as possible to replace or restore such property. The taxpayer will be required to furnish a bond with such [security or] surety as the Commissioner may require for an amount not less than the estimated additional *income and war profits and* excess profits [and income] taxes assessable by the United States upon the income so carried to the replacement fund [or at the option of the taxpayer and in lieu of such bond the taxpayer may deposit, as security for such estimated additional amount of tax, obligations of the United States issued after September 1, 1917, such obligations to be held in trust as such security under such agreement as may be prescribed by the Commissioner in a bank or trust company approved by him]. *See section* 1320 *of the statute.* The estimated additional [income and excess profits] taxes, for the amount of which the claimant is required to furnish security, should be computed at the rates at which the claimant would have been obliged to pay, taking into consideration the remainder of his net income and resolving against him all matters in dispute affecting the amount of the tax. Only surety companies holding certificates of authority from the Secretary of the Treasury as acceptable sureties on federal bonds will be approved as sureties [under schedule B of form 1114, and only active depositaries of public moneys will be approved as depositaries under schedule C]. The application should be executed in triplicate, so that the Commissioner, the applicant and the surety or depositary may each have a copy.

2862a **Art. 51. Forgiveness of Indebtedness.**—*The cancellation and forgiveness of indebtedness is dependent on the circumstances for its effect. It may amount to a payment of income or to a gift or to a capital transaction. If, for example, an individual performs services for a creditor, who in consideration thereof cancels the debt, income to that amount is realized by the debtor as compensation for his services. If, however, a creditor merely desires to benefit a debtor and without any consideration therefor cancels the debt, the amount of the debt is a gift from the creditor to the debtor and need not be included in the latter's gross income. If a stockholder in a corporation which is indebted to him gratuitously forgives the debt, the transaction amounts to a contribution to the capital of the corporation. If, however, a corporation to which a stockholder is indebted forgives the debt, the transaction has the effect of the payment of a dividend. See sections* 213 (*b*) (3) *and* 240 *of the statute and articles* 543 *and* 631–638.

2862b Art. 52. **When Included in Gross Income.**—*Gains, profits and income are to be included in the gross income for the taxable year in which they are received by the taxpayer, unless they are included when they accrue to him in accordance with the approved method of accounting followed by him. See articles* 21–24. Lands which are received as compensation for services in one year, the title to which is disputed and in a later year adjudged to be valid, constitute income to the grantee in the former year. [Money paid by a debtor to a receiver, pending determination as to which of two or more claimants other than the debtor is entitled to it, is to be treated as income of the successful claimant in the year when paid to the receiver.] On the other hand, a person may sue in one year on a pecuniary claim or for property, but money or property recovered on a judgment therefor rendered in a later year would be income in that year, assuming that it would have been income in the earlier year if then received. *This is true of a recovery for patent infringement.* [In general, a judgment for the plantiff may produce income for the year when rendered; a judgment for the defendant usually does not.] Bad debts or accounts charged off because of the fact that they were determined to be worthless, which are subsequently recovered, whether or not by suit, constitute income for the year in which recovered, regardless of the date when the amounts were charged off. *See articles* 111 *and* 151. *In view of the unusual conditions prevailing at the close of the year* 1918, *it is recognized that many items of gross income such as claims for compensation under cancelled contracts, together with claims against contracting departments of the Government for amortization and other matters, while properly constituting gross income for the taxable year* 1918, *were undecided and not sufficiently definite in amount to be reported in the original return for that year. In every such case the taxpayer should attach to his return a full statement of such pending claims and other matters, and when the correct amount of such items is ascertained an amended return for the taxable year* 1918 *should be filed.*

2862c Art. 53. **Income Not Reduced to Possession.**—*Income which is credited to the account of or set apart for a taxpayer and which may be drawn upon by him at any time is subject to tax for the year during which so credited or set apart, although not then actually reduced to possession. To constitute receipt in such a case the income must be credited to the taxpayer without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made. A book entry, if made, should indicate an absolute transfer from one account to another. If the income is not credited, but is set apart, such income must be unqualifiedly subject to the demand of the taxpayer. Where a corporation contingently credits its employees with bonus stock, but the stock is not available to such employees until the termination of five years of employment, the mere crediting on the books of the corporation does not constitute receipt. The distinction between receipt and accrual must be kept in mind. Income may accrue to the taxpayer and yet not be subject to his demand or capable of being drawn on or against by him.*

2862d Art. 54. **Examples of Constructive Receipt.**—*Where interest coupons have matured, but have not been cashed, such interest payment, though not collected when due and payable, is nevertheless available to the taxpayer and should therefore be included in his gross income for the year during which the coupons matured. This is so if the coupons are exchanged for other property instead of eventually being cashed. Dividends on corporate stock are subject to tax when set apart for the stockholder, although not yet collected by him. See section* 201 *of the statute and articles* 1541-1549. *The distributive share of the profits of a partner in a partnership or of a stockholder in a personal service*

corporation is regarded as received. See section 218 *of the statute and articles* 321-335. *Interest credited on savings banks deposit, even though the bank nominally have a rule, seldom or never enforced, that it may require so many days' notice in advance of cashing depositor's checks, is income to the depositor when credited. An amount credited to shareholders of a building and loan association, when such credit passes without restriction to the shareholder, has a taxable status as income for the year of the credit. Where the amount of such accumulations does not become available to the shareholder until the maturity of a share, the amount of any share in excess of the aggregate amount paid in by the shareholder is income for the year of the maturity of the share.*

GROSS INCOME DEFINED: EXCLUSIONS.

2863 **Art. 71. What Excluded from Gross Income.**—Gross income ex-
94 cludes the items of income specifically exempted by the statute and
944 also certain other kinds of income by statute or fundamental law free from tax. *Such tax-free income should not be included in the return of income and need not be mentioned in the return, unless information regarding it is specifically called for, as in the case, for example, of interest on municipal bonds. See article* 402. *The exclusion of such income should not be confused with the reduction of taxable income by the application of allowable deductions. See section* 212 *of the statute and article* 21. *As to exclusions from gross income by corporations, see section* 233 *and article* 541. [*For the following cut out here, see* ¶2875*b*: Compensation paid its officers and employees by a State or political subdivision thereof, fees received by notaries public commissioned by States, and the income of State workmen's compensation insurance funds established by State statutes, are not taxable. Employees of universities receiving salaries paid in part or in whole from funds available under the Smith-Lever Act of May 8, 1914, who are officers or employees of State, are not required to return as taxable incomes the salaries so received. *For War-Risk insurance see last sentence of paragraph* 2864.]

2864 **Art. 72. Proceeds of Insurance.**—(*a*) Upon the death of an in-
95 sured the proceeds of his life insurance policies, whether paid to his
945 estate or to individual beneficiaries, *directly or in trust,* (but not if paid to a corporation or partnership)] are excluded from the gross income of the beneficiary. *See article* 541. (*b*) During his life only so much of the amount received by an insured under life, endowment or annuity contracts as represents a return, without interest, of premiums paid by him therefor is excluded from his gross income. *See article* 47. (*c*) Whether he be alive or dead, the amounts received by an insured or his estate or other beneficiaries through accident or health insurance or under workmen's compensation acts as compensation for personal injuries or sickness are excluded from the gross income of the insured, his estate and other beneficiaries. Any damages recovered by suit or agreement on account of such injuries or sickness are similarly excluded from the gross income of the individual injured or sick, if living, or *of* his estate or other beneficiaries entitled to receive such damages, if dead. See *further* article 294. Since June 25, 1918, no assessment of any federal tax may be made on any allotments, family allowances, compensation, or death or disability insurance payable under the War Risk Insurance Act of September 2, 1917, as amended, even though the benefit accrued before that date. [Any return filed as the basis of an assessment to be made after June 25, 1918, should not include such benefits as part of taxable income.]

2864a **Art. 73. Gifts and Bequests.**—*Money and real or personal property*
97 *received as gifts, or received under a will or under statutes of descent*
961 *and distribution, are exempt from tax, although the income therefrom derived from investment, sale or otherwise is not. See section* 202 *of the statute and articles* 32 *and* 1562. *An amount of principal paid under a marriage settlement is a gift. Neither alimony nor an allowance based on a separation agreement is taxable income. See article* 291.

2865 **Art. 74 [Art. 73]. Interest Upon State Obligations.**—Among income
98 exempt from tax is interest upon the obligations of a State, Territory,
963 or any political subdivision thereof, or the District of Columbia. Obligations issued for a public purpose by or on behalf of the State or Territory or a duly organized political subdivision acting by constituted authorities duly empowered to issue such obligations are the obligations of a State or Territory or a political subdivision thereof. The term "political subdivision" denotes any division of the State or Territory made by the proper authorities thereof acting within their constitutional powers for the purpose of carrying out a portion of those functions of the State or Territory which by long usage and the inherent necessities of government have always been regarded as public. Political subdivisions of a State or Territory, within the meaning of the exemption, include special assessment districts so created, such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement, and similar districts and divisions of a State or Territory. The purchase by a State of property subject to a mortgage executed to secure an issue of bonds does not render the bonds obligations of the State, *and* [so that] the interest upon them *does not become* [becomes] exempt from taxation, whether or not the State assumes the payment of the bonds.

2866 **Art. 75 [Art. 74]. Dividends and Interest from Federal Land Bank**
99 **and National Farm Loan Association.**—As section 26 of the Federal
964 Farm Loan Act of July 17, 1916, provides that every federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from taxation, except taxes upon real estate, and that farm loan bonds, with the income therefrom, shall be exempt from taxation, the income derived from dividends on stock of federal land banks and national farm loan associations and from interest on such farm loan bonds is not subject to the income tax. *See also section* 231 (13) *of the statute.*

2867 **Art. 76 [Art. 75]. Dividends from Federal Reserve Bank.**—As section 7 of the Federal Reserve Act of December 23, 1913, provides that federal reserve banks, including the capital stock and surplus therein and the income derived therefrom, shall be exempt from taxation, except taxes upon real estate, such exemption attaches to and follows the income derived from dividends on stock of federal reserve banks in the hands of the stockholders, so that the dividends received on the stock of federal reserve banks are not subject to the income tax. Dividends paid by member banks, however, are treated like dividends of ordinary corporations.

2868 **Art. 77 [Art. 76]. Interest upon United States Obligations.**—
100 Although interest upon the obligations of the United States is in
965 general exempt from tax, in the case of such obligations issued after September 1, 1917, which include *Treasury certificates of indebtedness, war savings certificates and* the liberty bond issues (except the first

liberty loan 3½ *per cent bonds*), the interest is *exempt from tax* [excluded from gross income] only *if and* to the extent provided in the acts authorizing the issue thereof, *as amended and supplemented.* [Accordingly,] Interest credited to postal savings accounts upon moneys deposited in postal savings banks on or before September 1, 1917, is exempt from income tax, while interest credited upon deposits made subsequently to September 1, 1917, is liable to tax. Interest on the *first liberty loan* 3½ *per cent* bonds [of the first liberty loan] is entirely exempt from tax, but that absolute exemption *does not extend to the bonds of the first liberty loan converted* [is lost if the bonds are converted into bonds of later issues].

2869 **Art. 78 [Art. 77]. Liberty Bond Exemption from Normal Tax in**
103 **1918.**—The Second Liberty Bond Act of September 24, 1917, as
975 amended by the Third Liberty Bond Act of April 4, 1918, and by the Fourth Liberty Bond Act of July 9, 1918, provides:

Sec. 7. That none of the bonds authorized by section one, nor of the certificates authorized by section five, or by section six, of this Act, shall bear the circulation privilege. All such bonds and certificates shall be exempt, both as to principal and interest from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations. The interest on an amount of such bonds and certificates the principal of which does not exceed in the aggregate $5,000, owned by any individual, partnership, association, or corporation, shall be exempt from the taxes provided for in subdivision (b) of this section.

2870 *Accordingly, in addition to the interest on first liberty loan* 3½ *per cent bonds, which is entirely free from tax, all interest on first liberty loan converted* 4 *per cent bonds, first loan converted* 4¼ *per cent bonds, first liberty loan second converted* 4¼ *per cent bonds, second liberty loan* 4 *per cent bonds, second liberty loan converted* 4¼ *per cent bonds, third liberty loan* 4¼ *per cent bonds, and fourth liberty loan* 4¼ *per cent bonds, together with all interest on United States certificates of indebtedness and war savings certificates, is exempt from the normal tax. Such interest in excess of the interest on not exceeding* $5,000 *principal amount of such bonds and certificates may, however, be subject to surtax and to the war profits and excess profits tax and may accordingly require to be included in gross income.* [Accordingly, all interest on Liberty bonds of the second, third and fourth issues is exempt from the normal tax. Such interest may, however, be subject to surtax and may require to be included in gross income. As to any issue after the fourth, the provisions of the act authorizing it will govern its exemption.]

2871 **Art. 79 [Art. 78]. Liberty Bond Exemption from Surtax and War**
981 **Profits and Excess Profits Tax in 1918.**—Section 7 of the Second Liberty Bond Act provides that the interest on an aggregate of not exceeding $5,000 principal amount of liberty bonds of issues after the first, *owned by any person*, including in such later issues *bonds of the* first liberty *loan* [bonds] converted, *Treasury certificates and war savings certificates* [owned by any person at one time] shall be exempt from *surtaxes and war profits and excess profits taxes, as well as the normal tax* [all income and war

excess profits taxes]. The Supplement to Second Liberty Bond Act, approved September 24, 1918, provides:

> That until the expiration of two years after the date of the termination of the war between the United States and the Imperial German Government, as fixed by proclamation of the President—
>
> (1) The interest on an amount of bonds of the Fourth Liberty Loan the principal of which does not exceed $30,000 owned by any individual, partnership, association, or corporation, shall be exempt from graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations;
>
> (2) The interest received after January 1, 1918, on an amount of bonds of the First Liberty Loan Converted, dated either November 15, 1917, or May 9, 1918, the Second Liberty Loan, converted and unconverted, and the Third Liberty Loan, the principal of which does not exceed $45,000 in the aggregate, owned by any individual, partnership, association, or corporation, shall be exempt from such taxes: Provided, however, That no owner of such bonds shall be entitled to such exemption in respect to the interest on an aggregate principal amount of such bonds exceeding one and one-half times the principal amount of bonds of the Fourth Liberty Loan originally subscribed for by such owner and still owned by him at the date of his tax return; and
>
> (3) The interest on an amount of bonds, the principal of which does not exceed $30,000, owned by any individual, partnership, association, or corporation, issued upon conversion of 3½ per centum bonds of the First Liberty Loan in the exercise of any privilege arising as a consequence of the issue of bonds of the Fourth Liberty Loan, shall be exempt from such taxes.
>
> The exemptions provided in this section shall be in addition to the exemption provided in section 7 of the Second Liberty Bond Act in respect to the interest on an amount of bonds and certificates, authorized by such Act and amendments thereto, the principal of which does not exceed in the aggregate $5,000, and in addition to all other exemptions provided in the Second Liberty Bond Act.

2872 *Accordingly, the exemption from surtaxes and war profits and excess profits taxes covers, and there may be excluded from gross income, the interest received on not exceeding* $5,000 *principal amount in the aggregate of first liberty loan converted* 4 *per cent bonds, first liberty loan converted* 4¼ *per cent bonds, first liberty loan second converted* 4¼ *per cent bonds, second liberty loan* 4 *per cent bonds, second liberty loan converted* 4¼ *per cent bonds, third liberty loan* 4¼ *per cent bonds, fourth liberty loan* 4¼ *per cent bonds, and treasury certificates and war savings certificates, apportioned as the taxpayer may choose; and in addition, until the expiration of two years after the termination of the war, (a) the interest received on not exceeding* $30,000 *principal amount of fourth liberty loan* 4¼ *per cent bonds; plus (b) the interest received on an aggregate principal amount of first liberty loan converted* 4 *per cent bonds, first liberty loan converted* 4¼ *per cent bonds (dated May* 9, 1918), *second liberty loan bonds, converted and unconverted, and third liberty loan* 4¼ *per cent bonds, not exceeding* $45,000 *and not exceeding* 150 *per cent of the principal amount of bonds of the fourth liberty loan both originally subscribed for by the taxpayer and still owned by him at the date of his return; plus (c) the interest received on not exceeding* $30,000 *principal amount of first liberty loan second converted* 4¼ *per cent*

bonds (*dated October* 24, 1918). [Accordingly, there may be excluded from gross income (*a*) the interest received on not exceeding $5,000 principal amount of liberty bonds of any or all issues after the first, up to and including the fourth; and, until two years after the war, (*b*) the interest received on not exceeding $30,000 principal amount of liberty bonds of the fourth issue; plus (*c*) the interest received on an aggregate principal amount of liberty bonds of the first liberty loan converted, the second liberty loan, converted or unconverted, and the third liberty loan, not exceeding $45,000 and not exceeding 150 per cent of the principal amount of the bonds of the fourth liberty loan both originally subscribed for by the taxpayer and still owned by him at the date of his return; plus (*d*) the interest received on not exceeding $30,000 principal amount of liberty bonds into which first liberty bonds may have been converted in the exercise of any privilege arising as a consequence of the issue of the fourth liberty bonds.]

2872a Art. 80. Liberty Bond Exemption After December 31, 1918.—*The*
975 *Victory Liberty Loan Act of March* 3, 1919, *provides*:
3169 *Sec.* 2. (*a*) *That until the expiration of five years after the date of the term-*
3297 *ination of the war between the United States and the German Government, as fixed by proclamation of the President, in addition to the exemptions provided in section* 7 *of the Second Liberty Bond Act in respect to the interest on an amount of bonds and certificates, authorized by such Act and amendments thereto, the principal of which does not exceed in the aggregate* $5,000, *and in addition to all other exemptions provided in the Second Liberty Bond Act or the Supplement to Second Liberty Bond Act, the interest received on and after January* 1, 1919, *on an amount of bonds of the First Liberty Loan converted, dated November* 15, 1917, *May* 9, 1918, *or October* 24, 1918, *the Second Liberty Loan converted and unconverted, the Third Liberty Loan, and the Fourth Liberty Loan, the principal of which does not exceed* $30,000 *in the aggregate, owned by any individual, partnership, association, or corporation, shall be exempt from graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, now or hereafter imposed by the United States upon the income or profits of individuals, partnerships, associations, or corporations.*

(*b*) *In addition to the exemption provided in subdivision* (*a*), *and in addition to the other exemptions therein referred to, the interest received on and after January* 1, 1919, *on an amount of the bonds therein specified the principal of which does not exceed* $20,000 *in the aggregate, owned by any individual, partnership, association, or corporation, shall be exempt from the taxes therein specified: Provided, That no owner of such bonds shall be entitled to such exemption in respect to the interest on an aggregate principal amount of such bonds exceeding three times the principal amount of notes of the Victory Liberty Loan originally subscribed for by such owner and still owned by him at the date of his tax return.*

2872b *Accordingly, with respect to the interest on liberty bonds received after December* 31, 1918, *the exemption from surtaxes and war profits and excess profits taxes covers, and there may be excluded from gross income, in addition to the exemptions specified in articles* 77, 78 *and* 79, (*a*) *the interest received on and after January* 1, 1919, *until the expiration of five years after the termination of the war, on not exceeding* $30,000 *principal amount in the aggregate of first liberty loan converted* 4 *per cent bonds, first liberty loan converted* 4¼ *per cent bonds, first liberty loan second converted* 4¼ *per cent bonds, second liberty loan* 4 *per cent bonds, second liberty loan converted* 4¼ *per cent bonds, third liberty loan* 4¼ *per cent bonds, and fourth liberty loan* 4¼ *per cent bonds, apportioned as the taxpayer may choose: and in addition* (*b*)

the interest received on and after January 1, 1919, *during the life of the notes of the victory liberty loan, on an aggregate principal amount of the bonds described in subdivision (a) not exceeding* $20,000 *and not exceeding three times the principal amount of notes of the victory liberty loan originally subscribed for by the taxpayer and still owned by him at the date of his return. The specific exemptions of notes of the victory liberty loan will be prescribed by the Secretary of the Treasury pursuant to the Victory Liberty Loan Act.* [See ¶3297 for the exemption provisions.]

2873 Art. 81 [Art. 79]. **Liberty Bond Exemption in the Case of Trusts.**—(*a*) When income is taxable to beneficiaries, as in the case of a trust the income of which is to be distributed to the beneficiaries periodically, each beneficiary is regarded as the owner of a proportionate part of the bonds held in trust and is entitled to exemption on account of such ownership as if he owned such proportionate part of the bonds directly. In such a case a subscription by a trustee for bonds of the fourth liberty loan *or notes of the victory liberty loan*, constitutes each beneficiary existing at the time of such subscription an original subscriber for his proportionate part of such bonds *or notes*, *as the case may be*, and entitles such beneficiary to the *appropriate* collateral exemption of interest on bonds of previous issues, whether owned by such beneficiary or by the trustee, as if the beneficiary had himself originally subscribed for such proportionate part of the bonds *or notes;* and a subscription by such beneficiary for bonds of the fourth liberty loan, *or notes of the victory liberty loan*, *as the case may be*, entitles him to the *appropriate* collateral exemption of interest on bonds of previous issues held by the trustee. (*b*) When, on the other hand, income is taxable to the trustee, as in the case of a trust the income of which is accumulated for the benefit of unborn or unascertained persons, the trustee is regarded as the owner of all the bonds held in trust and the trust is entitled to any exemption on account of such ownership. In such a case a subscription by a trustee constitutes the trustee as such the original subscriber and entitles the trust, on account of such subscription, to the collateral exemption of interest on bonds of previous issues.

2874 Art. 82 [Art. 80]. **Liberty Bond Exemption In the Case of Partnerships and Personal Service Corporations.**—As income of a partnership is taxable to the individual partners, each partner is treated *as the owner of a proportionate part of the bonds held by the partnership* and *is* entitled to exemption on account of such ownership as if such partner owned such proportionate part of the bonds directly. Such partner, if a partner at the time of the original subscription by the partnership for bonds of the fourth liberty loan *or notes of the victory liberty loan*, *as the case may be*, is treated as an original subscriber for a proportionate part of such bonds *or notes* subscribed for by the partnership and is entitled to the *appropriate* collateral exemption of interest on bonds of previous issues on account of such original subscription for bonds *or notes* [of the fourth liberty loan] as if he had subscribed directly for such proportionate part [of the bonds]. This principle also applies to stockholders in personal service corporations.

2875 Art. 83 [Art. 81]. **Income of Foreign Governments.**—*The exemption*
104 *of income of foreign governments applies also to their political sub-*
996 *divisions.* Any income collected by foreign governments from investments in the United States in stocks, bonds or other domestic securities, which are not actually owned by but are loaned to such foreign governments, is subject to tax. The income of foreign ambassadors and min-

isters from investments in bonds and stocks and from interest on bank balances, and the fees of foreign consuls, are exempt from tax *but income of such foreign officials from any business carried on by them in the United States would be taxable.* The compensation of citizens of the United States who are officers or employees of a foreign government is, however, not exempt from tax.

2875a Art. 84. Income of States.—*In general income accruing to any*
107 *State, Territory or possession of the United States, or to any political*
1005 *subdivision thereof, or to the District of Columbia, is exempt from tax. See article* 74. *The income of State workmen's compensation insurance funds established by State statutes is not taxable. In the case of a public utility acquired, constructed, operated or maintained by a taxpayer under contract with any State, Territory, or political subdivision thereof, or with the District of Columbia, containing an agreement that a portion of the net earnings of such public utility shall be paid to the State, Territory, or political subdivision thereof, or the District of Columbia, the amount so paid may be deducted by the taxpayer as a necessary expense in transacting business. See section* 214 (*a*) (1) *of the statute.*

2875b Art. 85. Compensation of State Officers.—*Compensation paid its*
1013 *officers and employees by a State or political subdivision thereof, including fees received by notaries public commissioned by States and the commissions of receivers appointed by State courts, are not taxable. Employees of universities receiving salaries paid in part or in whole from funds available under the Smith-Lever Act of May* 8, 1914, *who are officers or employees of a State, are not required to return as taxable incomes the salaries so received. This is also true with respect to the Act of August* 30, 1890, *relating to colleges for the benefit of agriculture and the mechanic arts, and to the Act of March* 2, 1887, *relating to agricultural experiment stations in such colleges.*

2875c Art. 86. Compensation of Soldiers and Sailors.—*A person of either*
108 *sex in active service in the military or naval forces of the United States*
1006 *may exclude from gross income his or her compensation received from the United States up to the amount of* $3,500 *in any taxable year, except that this exemption does not apply to compensation received either before or after the present war. The date of the termination of the war for the purpose of the statute will be fixed by proclamation of the President. The military and naval forces of the United States include, among others, army contract surgeons and the individuals named in section* 1 *of the statute. A person is in active service if he is actually serving in such forces, not necessarily in the field or in the theatre of war, and is not merely on the retired or reserve list. Accordingly, if such a person receives compensation from the United States of* $3,500 *or less and has no other income of an amount sufficient in itself to require him to render a return of income, he need make no return. Members of draft boards are not as such entitled to this exemption.*

2875d Art. 87. Income Accruing Prior to March 1, 1913.—*Property held by the taxpayer on March* 1, 1913, *is capital. Included in this capital are all claims, whether evidenced by writing or not, and all interest which had accrued thereon before that date. Interest accruing on or after that date is taxable income. Where an interest-bearing claim contracted prior to March* 1, 1913, *is paid in whole or in part after that date, any gain derived from the conversion of the claim into money is taxable. The amount of such gain is the excess of the proceeds of the claim (both principal and interest), exclusive of any interest accrued since February* 28, 1913, *already returned as income, over the fair market value*

of the claim as of March 1, 1913 (*both principal and interest then accrued*). *In the case of an insurance policy its surrender value as of March* 1, 1913, *may be used as a basis for the purpose of ascertaining the gain derived from the sale or other disposition of such policy. Where services were rendered prior to March* 1, 1913, *but paid for thereafter, the amount received is taxable income to the extent of the excess of such amount over the fair market value on March* 1, 1913, *of the principal of the claim and any interest which had then accrued. A claim for the purpose of this article means a right existing unconditionally on March* 1, 1913, *and then assignable, whether presently payable or not. Interest does not, of course, include dividends on corporate stock. See section* 201 *of the statute and articles* 1541–1549.

2875e **Art. 88. Subtraction for Redemption of Trading Stamps.**—*Where a*
2021 *taxpayer, for the purpose of promoting his business, issues with sales trading stamps or premium coupons redeemable in merchandise or cash, he should in computing the income from such sales subtract only the amount received or receivable which will be required for the redemption of such part of the total issue of trading stamps or premium coupons issued during the taxable year as will eventually be presented for redemption. This amount will be determined in the light of the experience of the taxpayer in his particular business and of other users engaged in similar businesses. The taxpayer shall file for each of the five preceding years, or such number of these years as stamps or coupons have been issued by him, a statement showing* (*a*) *the total issue of stamps during each year,* (*b*) *the total stamps redeemed in each year, and* (*c*) *the percentage for each year of the stamps redeemed to the stamps issued in such year. A similar statement shall also be presented showing the experience of other users of stamps or coupons whose experience is relied upon by the taxpayer to determine the amount to be subtracted from the proceeds of sales. The Commissioner will examine the basis used in each return, and in any case in which the amount subtracted in respect of such stamps or coupons is found to be excessive an amended return or amended returns will be required.* [*Art. 104, of the preliminary edition read as follows:* Where a taxpayer, for the purpose of promoting his business, issues trading stamps or coupons redeemable in merchandise or cash, and sets up a reserve each year to cover all probable redemptions of coupons issued in that year, the reserve so set up may be deducted from gross income as a business expense, provided: (*a*) that the returns of the taxpayer are otherwise made on an accrual basis; (*b*) that any income tax and excess profits tax returns of the taxpayer which have been previously made covering the period since March 1, 1913, shall be amended, if necessary, so that deductions for any of such years are made on the basis of reserves instead of upon actual redemptions as formerly required; and (c) that no larger amount shall be set up as a reserve for any taxable year than would be required for the redemption of such part of the entire issue of that year as it appears will eventually be presented for redemption. The reserve percentage will be determined by considering the experience of the taxpayer and of other users, taking into account any material differences between the taxpayer's situation and that of other users whose experience is relied on. Taxpayers who submit returns on this basis shall file therewith any amended returns called for by this article and shall also attach thereto a statement of the experience of the taxpayer and of any other user of coupons whose experience is relied on to determine the percentage of reserve, indicating the name of such other user, the denominations most largely issued, and the character of business involved in each instance.]

GROSS INCOME DEFINED: NONRESIDENT ALIEN INDIVIDUAL.

2876 **Art. 91. Gross Income of Nonresident Alien Individuals.**—In
109 the case of nonresident alien individuals "gross income" means
503 only the gross income from sources within the United States. *This includes* [including] interest on bonds, notes or other interest-bearing obligations of residents, corporate or otherwise, dividends from resident corporations, amounts received representing profits on the manufacture or disposition of goods within the United States, rentals and royalties from property and income from business carried on in the United States, [income from isolated transactions or activities, directly resulting in gain, carried on within the United States by a nonresident or his representative in person,] interest on deposits in banks located within the United States, income from capital otherwise invested in the United States, and income from services rendered or labor performed within the United States. *For what is a resident corporation see article* 1509. *As to the gross income of foreign corporations see section* 233 (*b*) *of the statute and article* 550.

2877 **Art. 92. Income of Nonresident Alien Individuals not Subject to Tax.**—Salaries, wages, commissions and rents paid by domestic business enterprises to nonresident alien employees for services rendered entirely in a foreign country or for property located in a foreign country are not subject to tax as income from a source within the United States. Dividends on stock and interest on notes of corporations organized in the United States, but doing no business and owning no property therein, paid to nonresident alien individuals or corporations, are not subject to the tax. The tax does not apply to charter money *or freight payments* received by a foreign owner *in regard to* [for] a vessel operated between the United States and foreign ports, if the *person receiving the income maintains no regular agency in the United States and is not doing business in the United States. Compensation received by nonresident alien munitions inspectors and purchasing agents from foreign governments is not subjec to the tax* [making of the charter contract grows out of no solicitation or similar commercial activity by the owner or his representative in person within the United States].

2877a **Art. 93. Income of Nonresident Aliens from United States Bonds.**—
3180 *By virtue of section* 4 *of the Victory Liberty Loan Act of March* 3, 1919, *amending section* 3 *of the Fourth Liberty Bond Act of July* 9, 1918, *the interest received on and after March* 3, 1919, *on bonds, notes and certificates of indebtedness of the United States and bonds of the War Finance Corporation, while beneficially owned by a nonresident alien individual, or a foreign corporation, partnership or association, not engaged in business in the United States, is exempt from all income and war profits and excess profits taxes.*

DEDUCTIONS ALLOWED: BUSINESS EXPENSES.

2878 **Art. 101. Business Expenses.**—Business expenses, *whether sub-*
113 *tracted from total receipts in computing gross income or deducted from*
1020 *gross income in computing net income*, include all items entering into what is ordinarily known as the cost of goods sold, together with selling and management expenses, except such classes of items as are treated in articles 121 to 268. Among the items to be treated as business expenses are material, labor, supplies and repairs in the case of a manufacturer, while a merchant would include his purchases of goods bought for resale. In either case the amount to be taken as a deduction in any year should be determined

by taking into consideration the inventory at the beginning and end of the year. Other items that may be included as business expenses are reasonable compensation for the services of officers and employees, advertising and other selling expenses, together with insurance premiums against fire, storm, theft, accident or other similar losses in the case of a business, and rental for the use of business property. A taxpayer is entitled to deduct the necessary expenses paid in carrying on his business from his gross income from whatever source. *See section* 215 *of the statute and articles* 291–294. *As to deductions by corporations see section* 234 *and articles* 561–573.

2879 **Art. 102. Cost of Materials.**—Taxpayers carrying materials and supplies on hand should include in expenses the charges for materials and supplies only to the amount that they are actually consumed and used in operation during the year for which the return is made, provided that the cost of such material and supplies has not been taken into account in determining the net income for any previous year. If a taxpayer carries materials or supplies on hand for which no record of consumption is kept or of which physical inventories at the beginning and end of the year are not taken, it will be permissible for the taxpayer to include in his expenses and deduct from gross income the total cost of such supplies and materials as were purchased during the year for which the return is made, provided the net income is clearly reflected by this method.

2880 **Art. 103. Repairs.**—The cost of incidental repairs which neither materially add to the value of the property nor appreciably prolong its life, but keep it in an ordinarily efficient operating condition, may be deducted as expense, provided the plant or property account is not increased by the amount of such expenditures. Repairs in the nature of replacements, to the extent that they arrest deterioration and appreciably prolong the life of the property, should be charged against the depreciation reserve. See articles 161-171.

2881 [**Art. 104. Reserve for Redemption of Trading Stamps.**—*See* ¶2875e.]

2881a **Art. 104. Professional Expenses.**—*A professional man may claim as*
1031 *deductions the cost of supplies used by him in the practice of his pro-*
2965 *fession, expenses paid in the operation and repair of an automobile used in making professional calls, dues to professional societies and subscriptions to professional journals, the rent paid for office rooms, the expense of the fuel, light, water, telephone, etc., used in such offices, and the hire of office assistants. Amounts expended for books, furniture and professional instruments and equipment of a permanent character are not allowable as deductions. See section* 215 *and articles* 291–294.

2882 **Art. 105. Compensation for Personal Services.**—Among the ordi-
1979 nary and necessary expenses paid or incurred in carrying on any trade or business may be included a reasonable allowance for salaries or other compensation for personal services actually rendered. The test of deductibility in the case of compensation payments is whether they are reasonable and are in fact payments purely for services. This test and its practical application may be further stated and illustrated as follows:

2883 (1) Any amount paid in the form of compensation, but not in fact as the purchase price of services, is not deductible. (*a*) An ostensible salary paid by a corporation may be a distribution of a dividend on

stock. This is likely to occur in the case of a corporation having few stockholders, practically all of whom draw salaries. If in such a case the salaries are based upon or bear a close relationship to the stockholdings of the officers or employees, it would seem likely that the salaries, if in excess of those ordinarily paid for similar services, are not paid wholly for services rendered, but in part as a distribution of earnings upon the stock. (*b*) An ostensible salary paid by a corporation may be in part a waste or appropriation of assets of the corporation. This may occur where salaried employees are in control of the corporation through holding directly or indirectly a majority of its stock or, in the case of a large corporation with many stockholders, owning a substantial minority of its stock, and the tendency of the officers unduly to inflate their salaries must be taken into account. (*c*) An ostensible salary may be in part payment for property. This may occur, for example, where a partnership sells out to a corporation, the former partners agreeing to continue in the service of the corporation. In such a case it may be found that the salaries of the former partners are not merely for services, but in part constitute payment for the transfer of their business.

2884 (2) The form or method of fixing compensation is not decisive as to deductibility. While any form of contingent compensation invites scrutiny as a possible distribution of earnings of the enterprise, it does not follow that payments on a contingent basis are to be treated fundamentally on any basis different from that applying to compensation at a flat rate. Generally speaking, if contingent compensation is paid pursuant to a free bargain between the enterprise and the individual made before the services are rendered, not influenced by any consideration on the part of the employer other than that of securing on fair and advantageous terms the services of the individual, it should be allowed as a deduction even though in the actual working out of the contract it may prove to be greater than the amount which would ordinarily be paid.

2885 (3) In any event the allowance for compensation paid may not exceed what is reasonable in all the circumstances. It is in general just to assume that reasonable and true compensation is only such amount as would ordinarily be paid for like services by like enterprises in like circumstances. The circumstances to be taken into consideration are those existing at the date when the contract for services was made, not those existing at the date when the contract is questioned. *See article* 32.

2886 **Art. 106. Treatment of Excessive Compensation.**—As to the treatment of amounts ostensibly paid as compensation, but not allowed to be deducted as such, the following rules apply:

2887 (1) In the case of excessive payments by corporations, if such payments correspond or bear a close relationship to stockholdings, the amount of the excess should be treated as dividends and would thus be exempt from the normal tax in the hands of the recipients; or if such payments represent an appropriation of assets of the corporation by officers who control it and fix their compensation in violation of the rights of the corporation, the amount of the excess, while disallowed as a deduction by the corporation, should be treated as compensation of the individuals subject to the normal tax, compensation illegally secured being none the less subject to tax in all respects; or if such payments constitute in part payment for property, the amount of the excess should be treated by the corporation as a capital expenditure and by the recipient as part of the purchase price.

2888 (2) In the case of excessive payments by individuals or partnerships, the amounts disallowed should ordinarily be treated as shares of the profits of a partnership, except that a payment for

property should be treated by the individual or partnership as a capital expenditure and by the recipient as part of the purchase price.

2889 **Art. 107. Bonuses to Employees.**—Gifts or bonuses to employees will constitute allowable deductions from gross income when such payments are made in good faith and as additional compensation for the services actually rendered by the employees, provided such payments, when added to the stipulated salaries, do not exceed a reasonable compensation for the services rendered. Donations made to employees and others, which do not have in them the element of compensation or are in excess of reasonable compensation for services, are considered gratuities and are not deductible from gross income.

2890 **Art. 108. Pensions.**—Amounts paid for pensions to retired employees or to their families or others dependent upon them, or on account of injuries received by employees, and lump sum amounts paid as compensation for injuries, are proper deductions as ordinary and necessary expenses. Such deductions are limited to the amount not compensated for by insurance or otherwise. No deduction shall be made for contributions to a pension fund held by the corporation, the amount deductible in such case being the amount actually paid to the employee. When the amount of the salary of an officer or employee is paid for a limited period after his death to his widow or heirs in recognition of the services rendered by the individual, such payments may be deducted. Salaries paid by employers during the continuance of the war to employees who are absent in the military or naval service or are serving the Government in other ways at a nominal compensation, but who intend to return at the conclusion of the war, are allowable deductions.

2891 115 1022 **Art. 109. Rentals.**—Where a leasehold is acquired for a specified sum, the purchaser may take as a deduction in his return an aliquot part of such sum each year, based on the number of years the lease has to run. Taxes paid by a tenant to or for a landlord for business property are additional rent and constitute a deductible item to the tenant and taxable income to the landlord, the amount of the tax being deductible by the latter. The cost of erecting buildings or permanent improvements on ground leased by a taxpayer is additional rental and is therefore a proper deduction from gross income, provided such buildings and improvements under the terms of the lease revert to the owner of the ground at the expiration of the lease. In such a case the cost will be prorated according to the number of years constituting the term of the lease. The lessee will not be permitted to deduct from gross income any depreciation with respect to such buildings, but the cost of incidental repairs necessary to keep them in an efficient condition for the purposes of their use may be deducted. If, however, the life of the improvement is less than the life of the lease, depreciation may be taken by the lessee instead of treating the cost as rent. *See article* 48.

2892 890 **Art. 110. Expenses of Farmers.**—A farmer who operates a farm for profit is entitled to deduct from gross income as necessary expenses all amounts actually expended in the carrying on of the business of farming. The cost of ordinary tools, of short life or small cost, such as hand tools, including shovels, rakes, etc., may be included. The cost of feeding and raising live stock may be treated as an expense deduction, in so far as such cost represents actual outlay, but not including the value

of farm produce grown upon the farm or the labor of the taxpayer. Where a farmer is engaged in producing crops which take more than a year from the time of planting to the process of gathering and disposal, expenses deducted may be determined upon the crop basis, and such deductions must be taken in the year in which the gross income from the crop has been realized. If a farm is operated for recreation or pleasure and not on a commercial basis, and if the expenses incurred in connection with the farm are in excess of the receipts therefrom, the entire receipts from the sale of products may be ignored in rendering a return of income, and the expenses incurred, being regarded as personal expenses, will not constitute allowable deductions. The cost of farm machinery and farm buildings represents a capital investment and is not an allowable deduction as an item of expense. Amounts expended in the development of farms, orchards and ranches prior to the time when the productive state is reached *may be regarded as* [constitute] investments of capital. The amount expended in purchasing draft or work animals or live stock either for resale or for breeding purposes is regarded as an investment of capital. The purchase price of an automobile, even when wholly used in carrying on farming operations, is not deductible, *but* [and] it is regarded as an investment of capital. The cost of gasoline, repairs and upkeep of an automobile if used wholly in the business of farming is deductible as an expense; if used partly for business purposes and partly for the pleasure or convenience of the taxpayer or his family, such cost may be apportioned *according to* [in accordance with] the extent of the use for purposes of business and pleasure or convenience, and only the proportion of such cost justly attributable to [use for] business purposes [alone] is deductible as a necessary expense. *See articles* 38, 145 *and* 171.

2893 **Art. 111. When Charges Deductible.**—Each year's return, so far as practicable, both as to gross income and deductions therefrom, should be complete in itself, and taxpayers are expected to make every reasonable effort to ascertain the facts necessary to make a correct return. *See articles* 21–24 *and* 52. The expenses, liabilities, or deficit of one year can not be used to reduce the income of a subsequent year. A person making returns on an accrual [accrued] basis has the right to deduct all authorized allowances, whether paid in cash or set up as a liability, and it follows that if he does not within any year pay or accrue certain of his expenses, interest, taxes or other charges, and makes no deduction therefor, he can not deduct from the income of the next or any subsequent year any amounts then paid in liquidation of the previous year's liabilities. A loss from theft or embezzlement occurring in one year and discovered in another is deductible only for the year of its occurrence. Any amount paid pursuant to a judgment or otherwise on account of damages for personal injuries, patent infringement or otherwise, is deductible from gross income when the claim is [liquidated or] put in judgment or [actually] paid, less any amount of such damages as may have been compensated for by insurance or otherwise. If subsequently *to its occurrence* [thereto], however, a taxpayer *first ascertains* [has for the first time ascertained] the amount of a loss sustained during a prior taxable year *which has not been* [and not] deducted from the gross income [therefor], he may render an amended return for such preceding taxable year, including such amount of loss in the deductions from gross income, and may file a claim for refund of the excess tax paid by reason of the failure to deduct such loss in the original return. See section 252 of the statute and articles 1031–1038.

2894 **[Art. 112. Charges to Capital Account.**—*See* ¶ 2967.]

DEDUCTIONS ALLOWED: INTEREST.

2895 Art. 121. **Interest.**—Interest paid or accrued within the year on
116 indebtedness may be deducted from gross income. But interest
1049 on indebtedness incurred or continued to purchase or carry securities, such as municipal bonds, the interest upon which is exempt from tax, is not deductible. However, this exception does not apply to obligations of the United States issued after September 24, 1917, which include the liberty bonds of the second and subsequent issues, and interest on indebtedness incurred to purchase such obligations is deductible pursuant to the general rule. *See articles* 77–80. *Interest paid by the taxpayer on a mortgage upon real estate of which he is the legal or equitable owner, even though the taxpayer is not directly liable upon the bond or note secured by such mortgage, may be deducted as interest on his indebtedness.* [*The foregoing sentence, slightly changed, is brought from old Art. 563, for which see ¶3211.*] Payments made for Maryland or Pennsylvania ground rents are not deductible as interest.

2896 Art. 122. **Interest on Capital.**—Interest calculated as being a charge against income on account of capital or surplus invested in the business, but which does not represent a payment on an interest-bearing obligation, is not an allowable deduction from gross income; that is to say, the interest which the money might earn if otherwise invested is not a deductible charge against income.

DEDUCTIONS ALLOWED: TAXES.

2897 Art. 131. **Taxes.**—Federal taxes (except income, war profits and
119 excess profits taxes), State and local taxes (except taxes assessed
1052 against local benefits of a kind tending to increase the value of the property assessed), and taxes imposed by possessions of the United States or by foreign countries (except the amount of income, war profits and excess profits taxes allowed as a credit against the tax), are deductible from gross income. See section 222 of the statute and articles 381-384 as to tax credits. Postage is not a tax. Amounts paid to States under secured debts laws in order to render securities tax exempt are deductible. Automobile license fees are ordinarily taxes.

2898 Art. 132. **Federal Duties and Excise Taxes.**—Import or tariff duties paid to the proper customs officers, and business, license, privilege, excise and stamp taxes paid to internal revenue collectors, are deductible as taxes imposed by the authority of the United States, provided they are not added to and made a part of the expenses of the business or the cost of articles of merchandise with respect to which they are paid, in which case they can not be separately deducted.

2899 Art. 133. **Taxes for Local Benefits.**—So-called taxes, more properly assessments, paid for local benefits, such as street, sidewalk and other like improvements, imposed because of and measured by some benefit inuring directly to the property against which the assessment is levied, do not constitute an allowable deduction from gross income. A tax is considered assessed against local benefits when the property subject to the tax is limited to property benefited. Special assessments are not deductible, even though an incidental benefit may inure to the public welfare. The taxes deductible are those levied for the general public welfare by the proper taxing authorities at a like rate against all property in the territory over which such authorities have jurisdiction. Assessments

under Illinois laws relating to drainage districts are not limited to the property benefited, and assessments so paid are deductible. Assessments under the statutes of California relating to irrigation and of Iowa relating to drainage, and under certain statutes of Tennessee relating to levees, are limited to property benefited, and amounts so paid are not deductible as taxes. When assessments are made for the purpose of maintenance or repair of local benefits, the taxpayer may deduct the assessments paid as an expense incurred in business, if the payment of such assessments is necessary to the conduct of his business. Where the assessments are made for the purpose of constructing local benefits, the payments by the taxpayer are in the nature of capital expenditures and are not deductible. Where assessments are made for the purpose of both construction and maintenance or repairs, the burden is on the taxpayer to show the allocation of the amounts assessed to the different purposes. If the allocation can not be made, none of the amounts so paid is deductible.

2900 **Art. 134. Inheritance Taxes.**—State inheritance taxes paid by the executor or administrator of an estate of a deceased person, which are provided by law to be deducted from the respective legacies or distributive shares, are not allowable deductions in computing the net income of such estate subject to tax, even though the will contains a direction to pay inheritance taxes out of the residue. An inheritance tax is upon the transfer of the property and not upon the estate of the decedent or upon the executor or administrator, although the latter is required to pay it. In general, taxes paid or accrued within the year imposed by the authority of any State, or otherwise, are limited to those imposed upon the taxpayer and do not include taxes paid by him on behalf of another, even though he is required by law to make such payment. See articles 565 and 566. Since, moreover, the tax is imposed upon the transfer before the property reaches the legatee or distributee, and merely diminishes the capital share of the estate received by him, such tax is not imposed upon the legatee or distributee and is not an allowable deduction from his income. *Similarly, Federal estate taxes are not deductible.*

DEDUCTIONS ALLOWED—LOSSES

2901 **Art. 141. Losses.**—Losses sustained during the taxable year and
126 not compensated for by insurance or otherwise are fully deductible
127 (except by nonresident aliens) if (*a*) incurred in the taxpayer's
129 trade or business, or (*b*) incurred in any transaction entered into
1066 for profit, or (*c*) arising from fires, storms, shipwreck or other
1086 casualty, or from theft. They must usually be evidenced by closed
1084 and completed transactions. In the case of the sale of assets the
1085 loss will be the difference between the cost thereof, less depreciation sustained since acquisition, or the *fair market* value as of March 1, 1913, if acquired before that date, less depreciation since sustained, and the price at which they were disposed of. See section 202 of the statute and articles 39–46 *and* 1561. When the loss is claimed through the destruction of property by fire, flood or other casualty, the amount deductible will be the difference between the cost of the property or its *fair market* value as of March 1, 1913, and the salvage value thereof, after deducting from the cost or value as of March 1, 1913, the amount, if any, which has been or should have been set aside and deducted in the current year and previous years from gross income on account of depreciation and which has not been paid out in making good the depreciation sustained. But the loss should be reduced by

the amount of any insurance or other compensation received. See articles 49 and 50. *A loss in the sale of an individual's residence is not deductible.* Losses in illegal transactions are not deductible.

2902 **Art. 142. Voluntary Removal of Buildings.**—Loss due to the voluntary removal or demolition of old buildings, the scrapping of old machinery, equipment, etc., incident to renewals and replacements will be deductible from gross income in a sum representing the difference between the cost of such property demolished or scrapped and the amount of a reasonable allowance for the depreciation which the property had undergone prior to its demolition or scrapping; that is to say, the deductible loss is only so much of the original cost of the property, less salvage, as would have remained unextinguished had a reasonable allowance been charged off for depreciation during each year prior to its destruction. When a taxpayer buys real estate upon which is located a building which he proceeds to raze with a view to erecting thereon another building, it will be considered that the taxpayer has sustained no deductible loss by reason of the demolition of the old building, and no deductible expense on account of the cost of such removal, the value of the real estate, exclusive of old improvements, being presumably equal to the purchase price of the land and building plus the cost of removing the useless building.

2903 **Art. 143. Loss of Useful Value.**—When through some change in business conditions the usefulness in the business of some or all of the capital assets is suddenly terminated, so that the taxpayer discontinues the business or discards such assets permanently from use in the business, he may claim as a loss for the year in which he takes such action the difference between the cost or *the fair market* value as of March 1, 1913, of any asset so discarded (less any depreciation allowances) and its salvage value remaining. This exception to the rule requiring a sale or other disposition of property in order to establish a loss requires proof of some unforeseen cause by reason of which the property must be prematurely discarded, as, for example, where machinery or other property must be replaced by a new invention, or where an increase in the cost of or other change in the manufacture of any product makes it necessary to abandon such manufacture, to which special machinery is exclusively devoted, or where new legislation directly or indirectly makes the continued profitable use of the property impossible. This exception does not extend to a case where the useful life of property terminates solely as a result of those gradual processes for which depreciation allowances are authorized. It does not apply to inventories or to other than capital assets. The exception applies to buildings only when they are permanently abandoned or permanently devoted to a radically different use, and to machinery only when its use as such is permanently abandoned. Any loss to be deductible under this exception must be charged off on the books and fully explained in returns of income. *But see articles* 181–188. [This article is not intended to cover cases calling for the application of articles 181–187.]

2904 **Art. 144. Shrinkage in Securities and Stocks.**—A person possessing securities, such as stocks and bonds, can not deduct from gross income any amount claimed as a loss on account of the shrinkage in value of such securities through fluctuation of the market or otherwise. The loss allowable in such cases is that actually suffered when the securities mature or are disposed of. See, however, article 154. In the case of banks or other corporations which are subject to supervision by State or federal

authorities, and which in obedience to the orders of such supervisory officers charge off as losses amounts representing an alleged shrinkage in the value of property, the amounts so charged off do not constitute allowable deductions. The foregoing applies only to owners and investors, and not to dealers in securities, as to whom see article 1585. However, if stock of a corporation becomes worthless, its cost or its fair market value as of March 1, 1913, if acquired prior thereto, may be deducted by the owner in the taxable year in which the stock was ascertained to be worthless and charged off, provided a satisfactory showing of its worthlessness be made as in the case of bad debts. See article 151.

2905 **Art. 145. Losses of Farmers.**—Losses incurred in the operation
890 of farms as business enterprises are deductible from gross income. If farm products are held for favorable markets, no deduction on account of shrinkage in weight or physical value or by reason of deterioration in storage shall be allowed. The total loss by frost, storm, flood or fire of a prospective crop, or of a crop which has not been sold, is not a deductible loss in computing net income. A farmer engaged in raising and selling stock, cattle, sheep, horses, etc., is not entitled to claim as a loss the value of animals that perish from among those animals that were raised on the farm. If live stock has been purchased for any purpose, and afterwards dies from disease, exposure or injury, or is killed by order of the authorities of a State or the United States, the actual purchase price of such stock, less any depreciation which may have been previously claimed with respect to such perished live stock, *and* less also any insurance or indemnity recovered, may be deducted as a loss. The actual cost of other property, less depreciation already allowed, destroyed by order of the authorities of a State or of the United States may in like manner be claimed as a loss; but if reimbursement is made by a State or the United States in whole or in part on account of stock killed or property destroyed, the amount received shall be reported as income for the year in which reimbursement is made. In determining the cost of stock for the purpose of ascertaining the deductible loss there shall be taken into account only the purchase price, and not the cost of any feed, pasturage or care which has been deducted as an expense of operation. If gross income is ascertained by inventories, no deduction can be made for live stock or products lost during the year, whether purchased for resale or produced on the farm, as such losses will be reflected in the inventory by reducing the amount of live stock or products on hand at the close of the year. If an individual owns and operates a farm, in addition to being engaged in another trade, business or calling, and sustains a loss from such operation of the farm, then the amount of loss sustained may be deducted from gross income received from all sources, provided the farm is not operated for recreation or pleasure. See articles 38, 110, and 171.

DEDUCTIONS ALLOWED—BAD DEBTS

2906 **Art. 151. Bad Debts.**—An account merely written down or a debt
132 recognized as worthless prior to the beginning of the taxable year
1088 is not deductible. Where all the surrounding and attendant circumstances indicate that a debt is worthless and uncollectible and that legal action to enforce payment would in all probability not result in the satisfaction of execution on a judgment, a showing of these facts will be sufficient evidence of the worthlessness of the debt for the purpose of deduction. Bankruptcy may or may not be an indication of the worthlessness of a debt, and actual determination of worthlessness in such a case

is sometimes possible before and at other times only when a settlement in bankruptcy shall have been had. Where a taxpayer ascertained a debt to be worthless and charged it off in one year, the mere fact that bankruptcy proceedings instituted against the debtor are terminated in a later year confirming the conclusion that the debt is worthless will not authorize shifting the deduction to such later year. In the case of debts existing prior to March 1, 1913, only their value on that date may be deducted upon subsequently ascertaining them to be worthless. See article 52. *If a taxpayer computes his income upon the basis of valuing his notes or accounts receivable at their fair market value when received, which may be less than their face value, the amount deductible for bad debts in any case is limited to such original valuation.*

2907 **Art. 152. Examples of Bad Debts.**—Worthless debts arising from unpaid wages, salaries, rents and similar items of taxable income will not be allowed as a deduction unless the income such items represent has been included in the return of income for the year in which the deduction as a bad debt is sought to be made or in a previous year. Only the difference between the amount received in distribution of the assets of a bankrupt and the amount of the claim may be deducted as a bad debt. The difference between the amount received by a creditor of a decedent in distribution of the assets of the decedent's estate and the amount of his claim may be considered a worthless debt. A purchaser of accounts receivable which can not be collected and are consequently charged off the books as bad debts is entitled to deduct them, the amount of deduction to be based upon the price he paid for them and not upon their face value.

2908 **Art. 153. Worthless Mortgage Debt.**—Where under foreclosure a mortgagee buys in the mortgaged property and credits the indebtedness with the purchase price, the difference between the purchase price and the indebtedness will not be allowable as a deduction for a bad debt, for the property which was security for the debt stands in the place of the debt. The determination of loss in such a situation is deferred until the property is disposed of, *except where a purchase money mortgage is foreclosed by the vendor of the property.* See article 46. Only where a purchaser for less than the debt is another than the mortgagee may the difference between the debt and the net proceeds from the sale be deducted as a bad debt.

2909 **Art. 154. Worthless Securities.**—Where bonds purchased before March 1, 1913, depreciated in value between the date of purchase and that date, and were in a later year ascertained to be worthless and charged off, the owner is entitled to a deduction in that year equal to the value of the bonds on March 1, 1913. Bonds purchased since February 28, 1913, when ascertained to be worthless, may be treated as bad debts to the amount actually paid for them, but not exceeding their amortized value if purchased at a premium. Bonds of an insolvent corporation secured only by a mortgage from which on foreclosure nothing is realized for the bondholders are regarded as ascertained to be worthless not later than the year of the foreclosure sale, and no deduction for a bad debt is allowable in computing a bondholder's income for a subsequent year. To authorize a deduction for a bad debt on account of notes held prior to March 1, 1913, their value on that date must be established.

DEDUCTIONS ALLOWED—DEPRECIATION

2910 133 1089 **Art. 161. Depreciation.**—A reasonable allowance for the exhaustion, wear and tear and obsolescence of property used in the trade or business may be deducted from gross income. *For convenience such an allowance will usually be referred to as covering depreciation, excluding from the term any idea of a mere reduction in market value not resulting from exhaustion, wear and tear or obsolescence.* The proper allowance for such depreciation of any property used in the trade or business is that amount which should be set aside for the taxable year in accordance with a consistent plan by which the aggregate of such amounts for the useful life of the property in the business will suffice, with the salvage value, at the end of such useful life to provide in place of the property its cost, or its value as of March 1, 1913, if acquired by the taxpayer before that date. See further articles 839 and 844.

2911 **Art. 162. Depreciable Property.**—The necessity for a depreciation allowance arises from the fact that certain property used in the business gradually approaches a point where its usefulness is exhausted. The allowance should be confined to property of this nature. In the case of tangible property, it applies to that which is subject to wear and tear, to decay or decline from natural causes, to exhaustion, and to obsolescence due to the normal progress of the art or to becoming inadequate to the growing needs of the business. It does not apply to inventories or to stock in trade; nor to land apart from the improvements or physical development added to it. It does not apply to bodies of minerals which through the process of removal suffer depletion, other provision for this being made in the statute. See articles 201–233. Property kept in repair may, nevertheless, be the subject of a depreciation allowance. See article 103. The deduction of an allowance for depreciation is limited to property used in the taxpayer's trade or business. No such allowance may be made in respect of automobiles or other vehicles used chiefly for pleasure, a building used by the taxpayer solely as his residence, nor in respect of furniture or furnishings therein, personal effects, or clothing; but properties and costumes used exclusively in a business, such as a theatrical business, may be the subject of a depreciation allowance.

2912 **Art. 163. Depreciation of Intangible Property.**—Intangibles, the use of which in the trade or business is definitely limited in duration, may be the subject of a depreciation allowance. Examples are patents and copyrights, [and limited leases,] licenses and franchises. Intangibles, the use of which in the business or trade is not so limited, will not usually be a proper subject of such an allowance. If, however, an intangible asset acquired through capital outlay is known from experience to be of value in the business for only a limited period, the length of which can be estimated from experience with reasonable certainty, such intangible asset may be the subject of a depreciation allowance, provided the facts are fully shown in the return or prior thereto to the satisfaction of the Commissioner. There can be no such allowance in respect of good will, trade names, trade marks, trade brands, secret formulae or processes.

2913 1253 [**Art. 164. Depreciation of Trust Property.**—In the case of a trust where the terms of the will or trust or the decree of a court of competent jurisdiction or the general law require the corpus of the estate to be kept intact, and where physical property forming a part of the corpus of such estate is subject to depreciation through its em-

ployment in business, the fiduciary may claim in his return of income an allowance for such depreciation for the taxable year, provided the amount of the deduction is applied or held by the fiduciary for making good such depreciation. Fiduciaries in their returns should set forth the provision of the law, trust or decree requiring such depreciation deduction and should show that the amount deducted has been or will be preserved and so applied. All amounts paid by fiduciaries to beneficiaries of trust estates as income from such trust estates, whether from reserves or otherwise, are distributions of income and will be so treated for income tax purposes.] *See note on page* 301.

2914 Art. 164 [Art. 165]. Capital Sum Recoverable through Depreciation Allowances.—The capital sum to be replaced by depreciation allowances is the cost of the property in respect of which the allowance is made, except that in the case of property acquired by the taxpayer prior to March 1, 1913, the capital sum to be replaced is the fair market value of the property as of that date. In the absence of proof to the contrary, it will be assumed that such value as of March 1, 1913, is the cost of the property less depreciation up to that date. To this sum should be added from time to time the cost of improvements, additions *and* betterments, [replacements, and renewals,] the cost of which is not deducted as an expense in the taxpayer's return, and from it should be deducted from time to time the amount of any definite loss or damage sustained by the property through casualty, as distinguished from the gradual exhaustion of its utility which is the basis of the depreciation allowance. In the case of the acquisition after March 1, 1913, of a combination of depreciable and nondepreciable property for a lump price, as, for example, land and buildings, the capital sum to be replaced is limited to that part of the lump price which represents the value of the depreciable property at the time of such acquisition.

2915 Art. 165 [Art. 166]. Method of Computing Depreciation Allowance.—The capital sum to be replaced should be charged off over the useful life of the property either in equal annual installments or in accordance with any other recognized trade practice, such as an apportionment of the capital sum over units of production. Whatever plan or method of apportionment is adopted must be reasonable and should be described in the return.

2916 Art. 166 [Art. 167]. Modification of Method of Computing Depreciation.—If it develops that the useful life of the property has been underestimated, the plan of computing depreciation should be modified and the balance of the cost of the property, or its fair market value as of March 1, 1913, not already provided for through a depreciation reserve, *or deducted from book value*, should be spread over the estimated remaining life of the property. A taxpayer who in computing depreciation allowances in returns for years prior to 1918 has not taken ordinary obsolescence into consideration may for the year 1918 and subsequent years revise the estimate of the useful life of any property so as to allow for such future obsolescence as may be expected from experience to result from the normal progress of the art [sic]. No modification of the method should be made on account of changes in the market value of the property from time to time, such as, on the one hand, loss in rental value of buildings due to deterioration of the neighborhood, or, on the other, appreciation due to increased demand. The conditions affecting such market values should be taken into consideration only so far as they affect the estimate of the useful life of the property.

2917 Art. 167 [Art. 168]. **Depreciation of Patent or Copyright.**—In computing a depreciation allowance in the case of a patent or copyright, the capital sum to be replaced is the cost (not already deducted as current expense) of the patent or copyright or its fair market value as of March 1, 1913, if acquired prior thereto. The allowance should be computed by an apportionment of the cost of the patent or copyright or of its fair market value as of March 1, 1913, over the life of the patent or copyright since its grant, or since its acquisition by the taxpayer, or since March 1, 1913, as the case may be. If the patent or copyright was acquired from the Government, its cost consists of the various Government fees, cost of drawings, experimental models, attorney's fees, etc., actually paid. *If a corporation purchased a patent and paid for it in stock or securities, its cost is the fair market value of the stock or securities at the time of the purchase. Depreciation of a patent can be taken on the basis of the fair market value as of March* 1, 1913, *only when affirmative and satisfactory evidence of such value is offered. Such evidence should whenever practicable be submitted with the return. If the patent becomes obsolete prior to its expiration such proportion of the amount on which its depreciation may be based as the number of years of its remaining life bears to the whole number of years intervening between the date when it was acquired and the date when it legally expires may be deducted, if permission so to do is specifically secured from the Commissioner. Owing to the difficulty of allocating to a particular year the obsolescence of a patent, such permission will be granted only if affirmative and satisfactory evidence that the obsolescence occurred in the year for which the return is made is submitted to the Commissioner. The fact that depreciation has not been taken in prior years does not entitle the taxpayer to deduct in any taxable year a greater amount for depreciation than would otherwise be allowable.* See articles 40 and 843. [A taxpayer may elect not to take a depreciation allowance for patents, but such election if made is final and will control the returns for all subsequent years.]

2918 Art. 168 [Art. 169]. **Depreciation of Drawings and Models.**—A taxpayer who has incurred expenses in his business for designs, drawings, patterns, models, or work of an experimental nature calculated to result in improvement of his facilities or his product, may at his option deduct such expenses from gross income for the taxable year in which they are incurred or treat such articles as a capital asset to the extent of the amount so expended. In the latter case, if the period of usefulness of any such asset may be estimated from experience with reasonable accuracy, it may be the subject of depreciation allowances spread over such estimated period of usefulness. The facts must be fully shown in the return or prior thereto to the satisfaction of the Commissioner. Except for such depreciation allowances no deduction shall be made by the taxpayer against any sum so set up as an asset except on the sale or other disposition of such assets at a loss or on proof of a total loss thereof.

2919 Art. 169 [Art. 170]. **Charging Off Depreciation.**—A depreciation allowance, in order to constitute an allowable deduction from gross income, must be charged off. The particular manner in which it shall be charged off is not material, except that the amount measuring a reasonable allowance for depreciation must be either deducted directly from the book value of the assets or preferably credited to a depreciation reserve account, which must be reflected in the annual balance sheet. The allowances should be computed and charged off with express reference to specific items, units or groups of property, each item or unit being considered separately or specifically included in a group with others to which the same factors apply. The

taxpayer should keep such records as to each item or unit of depreciable property as will permit the ready verification of the factors used in computing the allowance for each year for each item, unit or group.

2920 **Art. 170 [Art. 171]. Closing Depreciation Account.**—If the use of *any* [the] property in the business is permanently discontinued, although no sale or other disposition of the property has *taken place* [been made], a determination of any gain or loss may be made; but any deduction in respect of any loss thereon must be disclosed in the taxpayer's return for the year in which the determination is made and a full statement of the facts and the basis upon which the computation is calculated must be attached to the return. Upon a sale or other disposition of the property, the consideration received shall be compared with the amount of the estimated salvage value used in computing the gain or loss as above provided, and the amount of the difference shall be treated as a gain or loss, as the case may be, of the year in which the sale or other disposition was made. *See articles* 141–145.

2921 **Art. 171 [Art. 172]. Depreciation in the Case of Farmers.**—A reason-
890 able allowance for depreciation may be claimed on farm buildings (other than a dwelling occupied by the owner), farm machinery and other physical property, including live stock purchased for draft, dairy or breeding purposes, but no claim for depreciation on life stock raised or purchased for resale, will be allowed. Live stock purchased for draft, breeding or dairy purposes, or for any purpose other than resale, may be included in the inventory for each year at a figure which will reflect the reduction in value estimated to have occurred during the year through increase of age or other causes. Such a reduction in value should be based on the cost and estimated life of the live stock. If an inventory is not used, a reasonable allowance for depreciation may be claimed based upon the cost of draft and work animals and animals kept solely for breeding purposes and not for resale. See also articles 38, 110 and 145.

DEDUCTIONS ALLOWED: AMORTIZATION.

2922 **Art. 181. Scope of Provision for Amortization.**—*Any allowance*
134 *made to a taxpayer by a contracting Department of the Government or*
1093 *by any other contractor for amortization or fall in the value of property, either as a part of the cost of production or as a part of the price of the product, shall be included in gross income. See article* 52. *The amount to be allowed as a deduction from gross income for amortization for the purpose of the tax is to be based upon the provisions of articles* 181 *to* 188, *pursuant to which the deduction should be made instead of upon the basis of any amounts contractually or otherwise determined. The allowance for amortization covers the decline in value of the property subject thereto and is inclusive of the depreciation which would ordinarily be allowed separately. Depreciation for any taxable period after December* 31, 1917, *should, therefore not be claimed with respect to property as to which an allowance for amortization is claimed. See also section* 204 *of the statute and articles* 1601-1603.

2922a **Art. 182 [Art. 181]. Property Cost of Which May Be Amortized.**—The taxpayer may make a reasonable deduction from gross income not in excess of a sum sufficient to extinguish the cost of buildings, machinery, equipment or other facilities constructed, erected, installed or acquired on or after April 6, 1917, for the production of articles contributing to the prosecution of the present war, and of vessels constructed or acquired

on or after such date for the transportation of articles or men contributing to the prosecution of the present war. *In the case of property the construction or installation of which was commenced before April* 6, 1917, *and completed subsequently to that date, amortization will be allowed with respect only to the cost incurred on or after April* 6, 1917. [A deduction on account of amortization will be allowed only in the case of enterprises or projects falling within the class of activities contributing to the prosecution of the present war. See also section 204 of the statute and articles 1601–1603.]

2923 **Art. 183. Cost Recoverable Through Amortization.**—*The total amount to be extinguished by amortization, in general, is the excess of the unextinguished or unrecovered cost of the property over its maximum value (either for sale or for use as part of the plant or equipment of a going business) under stable postwar conditions. Under the provisions of the statute authorizing reexamination of the claim at any time within three years after the termination of the present war, the allowance will be finally determined upon such basis. However, in many cases it will be impracticable during the calendar year* 1919 *to make final determination either of the length of the amortization period or of the value of the property under stable postwar conditions. Consequently, in returns made during the calendar year* 1919 *the amortization allowance will tentatively be determined in accordance with articles* 184 *and* 185.

2924 **Art. 184. Cost Which May Be Amortized.**—*For the purpose of making returns in* 1919 *the total amount to be extinguished by amortization is the difference between the value of the property on the basis indicated below and the original cost of the property less any amounts otherwise deducted for depreciation, losses, etc., prior to January* 1, 1918; *or in the case of property acquired or completed after December* 31, 1917, *it is the difference between the value of the property on the basis indicated below and the cost of such property at the date of acquisition or completion.*

2924a (1) *In the case of property useful only during the war period and permanently discarded at the date of the return the basis is the salvage value as of the date when the property was discarded.*

2924b (2) *In the case of property still in use which will not be required for the future use of the business and which is certain to be permanently discarded before the last installment payment of the tax covered by the return the basis is the salvage value as of the date when the property will be permanently discarded.*

2924c (3) *In the case of other property the basis is the estimated reproduction cost as of April,* 1919, *of such property in its then condition. In the final determination such cost will be ascertained under stable postwar conditions, without reference to such date.*

2924d *A special record of all property falling in classes* (1) *and* (2) *must be preserved by the taxpayer and the Commissioner must be promptly advised* (*a*) *if such property is restored to use;* (*b*)*the selling price if sold; and* (*c*), *if still on hand and not in use at the close of the three year period, the reasons why such property has not been disposed of.*

2925 **Art. 185. Method of Amortization.**—*For the purpose of making returns in* 1919 *the amount to be extinguished by amortization shall be spread in proportion to the net income (computed without benefit of the amortiz-*

ation allowance) between January 1, 1918, *and the following dates: (a) if the claim is based on subdivision* (1) *of article* 184, *the date when the property was permanently discarded; (b) if the claim is based on subdivision* (2) *of article* 184, *the date upon which the property will be permanently discarded; and (c) if the claim is based upon subdivision* (3) *of article* 184, *April*, 1919. *All taxpayers claiming an allowance for amortization will be required to estimate the amount of their net income for the period between January* 1, 1918, *and the dates specified above, and also to estimate what part of such net income is properly allocable to the calendar year* 1918 *and what part thereof is properly allocable to the calendar year* 1919. *Such estimates shall be the basis for apportioning the amounts to be extinguished by amortization between the calendar years* 1918 *and* 1919. *Taxpayers reporting on the fiscal year basis (a) in all computations based upon* 1918 *rates shall use the amount of such allowance apportioned to the calendar year* 1918; *(b) in any computation based upon* 1919 *rates for a year beginning in* 1918 *and ending in* 1919 *shall use the amount of such allowance apportioned to the calendar year* 1919; *and (c) in any computation for a fiscal year beginning in* 1919 *shall use as many twelfths of the allowance apportioned to the calendar year* 1919 *as there are months of such fiscal year falling in the calendar year* 1919.

[**Art. 182. Cost Which May Be Amortized.**—The total amount to be extinguished by amortization is the difference between the original cost to the taxpayer of the property and its value to the taxpayer at the close of the amortization period (*a*) for sale or (*b*) for use, immediate or prospective, as part of the plant or equipment of a going business, which ever value is the larger, less any amounts otherwise deducted or deductible for wear, tear, obsolescence, and loss. In the case of property the construction or installation of which was commenced before April 6, 1917, and completed subsequently to that date, amortization will be allowed with respect only to the cost incurred on or after April 6, 1917.] *See note on page* 301.

[**Art. 183. Amortization Period.**—The period over which the deduction allowed is to be spread, or during which it is to be amortized, is the estimated period between the date of acquisition or completion of the property and the date upon which either (*a*) the property will become useless or (*b*) the taxpayer will be able to earn by operation or use a normal return upon the unamortized cost, whichever date is the earlier.] *See note on page* 301.

[**Art. 184. Method of Amortization.**—The proportion of allowable deduction to be allocated to each taxable year of the amortization period will be, as nearly as may be determined, the same proportion which the net income or profit derived during such taxable year bears to the entire net income or profit derived during the amortization period from the operation or use of such property.] *See note on page* 301.

2926 **Art. 186 [Art. 185]. Additional Requirements for Amortization.**—Claims for amortization must be unmistakably differentiated in the return from all other claims for wear, tear, obsolescence and loss. No such claim will be allowed unless it is reflected in any accounts submitted by the taxpayer to stockholders and in any credit statements by the taxpayer to banks, and is given full effect on his financial books of account. If Government or other contracts taken by the taxpayer contained recognition of amortization as an element in the cost of production, copies of such contracts shall be filed with the taxpayer's return, together with a statement and description of any sums received on account of amortization and the basis upon which they were determined. In any case in which an allowance has been made for amortization of cost the taxpayer will not be allowed to

restore to his invested capital for the purpose of the war profits and excess profits tax any portion of the amount covered by such allowance.

2927 **Art. 187 [Art. 186]. Redetermination of Amortization Allowance.**—A redetermination of the deduction allowed on account of amortization may, or at the request of the taxpayer shall, be made by the Commissioner at any time within three years after the termination of the present war, and if as a result of an appraisal or from other evidence it is found that the deduction originally allowed was incorrect, the amount of tax due for each taxable year during the amortization period will be adjusted by additional assessment or by refund.

2928 **Art. 188 [Art. 187]. Information to be Furnished by Taxpayer.**—To obtain the benefit of this provision of the statute the taxpayer must establish to the satisfaction of the Commissioner that the entire deduction claimed and the proportion claimed for any particular year are reasonable. The taxpayer shall also submit a supplementary statement setting forth the following information: (*a*) a description of the property in reasonable detail; (*b*) the date or dates on which the property was acquired, and from whom, or, if constructed, erected or installed by the taxpayer, the dates on which such construction, erection or installation was begun and completed; (*c*) evidence establishing the intention of the taxpayer on and after April 6, 1917, or on and after the date of acquisition or the date of beginning construction, erection or installation, to devote such property or vessels to the production of articles (or, in the case of vessels, the transportation of articles or men) contributing to the prosecution of the present war; (*d*) the cost of construction, erection, installation or acquisition; (*e*) the value of the property after termination of the amortization period; (*f*) a segregation of *the* property *permanently discarded, or of the property which will be permanently discarded before the last installment payment covered by the return* [which will have no value (except for salvage) following the amortization period, and of property which will have value after such period for use in a going concern or business]; (*g*) all deductions from gross income otherwise taken or claimed with respect to such property; (*h*) the computation by which the total amount to be extinguished by amortization was determined; and (*i*) the computation by which the proportion of the amortization charge claimed as a deduction in the taxable year for which return is being made was determined.

DEDUCTIONS ALLOWED—DEPLETION

2929 **Art. 201. Depletion of Mines, Oil and Gas Wells.**—A reasonable
137 deduction from gross income for the depletion of natural deposits
1096 and for the depreciation of improvements is permitted, based (*a*) upon cost, if acquired after February 28, 1913, or (*b*) upon the fair market value as of March 1, 1913, if acquired prior thereto, or (*c*) upon the fair market value within 30 days after the date of discovery in the case of mines, oil and gas wells discovered by the taxpayer after February 28, 1913, where the fair market value is materially disproportionate to the cost. The essence of this provision is that the owner of such property, whether it be a leasehold or freehold, shall secure through an aggregate of annual depletion and depreciation deductions a return of the amount of capital invested by him in the property, or in lieu thereof an amount equal to the fair market value as of March 1, 1913, of the properties owned prior to that date, or an amount equal to the fair market value within 30 days after the date of discovery of mines, oil or gas wells discovered by the taxpayer on or

after March 1, 1913, and not acquired as the result of purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost; plus in any case the subsequent cost of plant and equipment (less salvage value) and underground and overground development, which is not chargeable to current operating expense, but not including land values for purposes other than the extraction of minerals. Operating owners, lessors and lessees are entitled to deduct an allowance for depletion, but a stockholder in a mining or oil or gas corporation is not. *See further articles* 839 *and* 844.

2930 **Art. 202. Capital Recoverable through Depletion Allowance in the Case of Owner.**—In the case of an operating owner in fee or a lessor the capital remaining in any year recoverable through depletion allowances is the sum of (*a*) the cost of the property, or its fair market value as of March 1, 1913, or its fair market value within 30 days after discovery, as the case may be, plus (*b*) the cost of subsequent improvements and development not charged to current operating expenses, but minus (c) deductions for depletion which [have] *has* or should have been taken to date and (*d*) the portion of the capital account, if any, as to which depreciation has been and is being deducted instead of depletion. The value of the surface of the land should be taken into consideration. In no case, however, may a lessor [take deductions for depletion in any year during the continuance of the lease in excess of the royalties payable thereunder for such year, nor may he] include in his capital recoverable through such an allowance any part of development costs not borne by the lessor *nor any part of the discovery value.*

2931 **Art. 203. Capital Recoverable through Depletion Allowance in the Case of Lessee.**—In the case of a lessee the capital remaining in any year recoverable through depletion allowances is the sum of (*a*) the cost of the leasehold, or its fair market value as of March 1, 1913, or its fair market value within 30 days after discovery, as the case may be, plus (*b*) the cost of subsequent improvements and development not charged to current operating expenses, but minus (*c*) deductions for depletion which [have] *has* or should have been taken to date and (*d*) the portion of the capital account, if any, as to which depreciation has been and is being deducted instead of depletion. Any annual or periodical rents or royalties supplementing the bonus or other amount paid for the lease may be charged to current operating expenses or, *until the property reaches the operating stage*, to capital account, and in the latter event will form part of the capital returnable through deductions for depletion.

2932 **Art. 204. Apportionment of Deductions between Lessor and Lessee.**—As the value of property comprehends the interests of both lessor and lessee, no computation, for the purpose of depletion allowances, of the value of these interests separately as of any date which combined exceeds the value of the property in fee simple will be permitted. The same principle applies to holders of fractional interests. If the aggregate deduction claimed is deemed excessive, the Commissioner may request the owner or lessee to show that the valuation claimed does not exceed the fair market value of the property at a specified date determined in the manner explained in article 206. The lessor and lessee shall, with the approval of the Commissioner, equitably apportion the allowance in the light of the peculiar conditions in each case and on the basis of their respective

interests therein. To the return of every taxpayer claiming an allowance for depletion in respect of (*a*) property in which he owns a fractional interest only or (*b*) a leasehold or (*c*) property subject to a lease, there shall be attached a statement setting forth the name and address and the precise nature of the holdings of each person interested in the property.

2933 Art. 205. **Determination of Cost of Deposits.**—In any case in which a depletion or depreciation deduction is computed on the basis of the cost or price at which any mine, mineral deposit, mineral right or leasehold was acquired, the owner or lessee will be required upon request of the Commissioner to show that the cost or price at which the property was bought was fixed for the purpose of a bona fide purchase and sale, by which the property passed to an owner in fact as well as in form different from the vendor. No fictitious or inflated cost or price will be permitted to form the basis of any calculation of a depletion or depreciation deduction, and in determining whether or not the price or cost at which any purchase or sale was made represented the actual market value of the property sold, due weight will be given to the relationship or connection existing between the person selling the property and the buyer thereof.

2934 Art. 206. **Determination of Fair Market Value of Deposits.**—Where the fair market value of the property at a specified date in lieu of the cost thereof is the basis for depletion and depreciation deductions, such value must be determined, subject to approval or revision by the Commissioner, by the owner of the property in the light of the conditions and circumstances known at that date, regardless of later discoveries or developments in the property or in methods of mining or extraction. The value sought should be that established assuming a transfer between a willing seller and a willing buyer as of that particular date. No rule or method of determining the fair market value of mineral property is prescribed, but the Commissioner will lend due weight and consideration to any and all factors and evidence having a bearing on the market value, such as cost, actual sales and transfers of similar properties, market value of stock or shares, royalties and rentals, value fixed by the owner for purposes of the capital stock tax, valuation for local or State taxation, partnership accountings, records of litigation in which the value of the property was in question, the amount at which the property may have been inventoried in probate court, disinterested appraisals by approved methods, and other factors.

2935 Art. 207. **Revaluation of Deposits not Allowed.**—The cost of the property or its fair market value at a specified date, as the case may be, plus subsequent charges to capital account not deductible as current expense, will be the basis for determining the depletion and depreciation deductions for each year during the continuance of the ownership under which the fair market value or cost was fixed, and during such ownership there can be no revaluation for the purpose of this deduction. This rule will not forbid the redistribution of the capital account over the estimated number of units remaining in the property in accordance with either of the next two articles.

2936 Art. 208. **Determination of Quantity of Ore in Mine.**—Every taxpayer claiming a deduction for depletion will be required to estimate with respect to each separate property the total units (tons, pounds, ounces or other units) of ores and minerals reasonably known or on good evidence believed to have existed in the ground on March 1, 1913,

or on the date of acquisition of the property, or within 30 days after the date of discovery, as the case may be. In estimating the total units of ores and minerals for purposes of depletion the property must be considered in the condition in which it was on March 1, 1913, or the date of acquisition, or within 30 days after the date of discovery, but if subsequently during the ownership of the taxpayer making the return additional recoverable mineral deposits have been discovered or developed which were not taken into account in estimating the number of units for purposes of depletion, or if it shall be discovered by working, development or exploration that ground previously estimated to contain commercially recoverable mineral is barren or contains only commercially unworkable mineral, a new estimate of the recoverable units of ores or minerals (*but not of the cost or fair market value at a specified date*) shall be made and when made shall thereafter constitute a basis for depletion. In the selection of the unit of estimate the custom or practice applicable to the type of mineral deposit and the character of the operations thereon should be considered. The estimate of the recoverable units of ores or minerals for the purpose of depletion shall include (*a*) the ores and minerals "in sight," "blocked out," "developed," or "assured," in the usual or conventional meaning of these terms in respect to the type of deposit, and may also include (*b*) "prospective" or "probable" ores and minerals (in the same sense), that is, ores and minerals that are believed to exist on the basis of good evidence, although not actually known to occur on the basis of existing development; but "probable" or "prospective" ores and minerals may be computed for purposes of depletion only as extensions of known deposits into undeveloped ground.

2937 **Art. 209. Determination of Quantity of Oil in Ground.**—In the case of either an owner or lessee it will be required that an estimate, subject to the approval of the Commissioner, shall be made of the probable recoverable oil contained in the territory with respect to which the investment is made as of the time of purchase, or as of March 1, 1913, if acquired prior to that date, or within 30 days after the date of discovery, as the case may be. The oil reserves must be estimated for all undeveloped proven land as well as producing land. If information subsequently obtained clearly shows the estimate to have been materially erroneous, it may be revised with the approval of the Commissioner.

2938 **Art. 210. Computation of Allowance for Depletion of Mines and Oil Wells.**—When the cost or value as of March 1, 1913, or within 30 days after the date of discovery of the property shall have been determined, and the number of mineral units in the property as of the date of acquisition or valuation shall have been estimated, the division of the former amount by the latter figure will give the unit value for purposes of depletion, and the depletion allowance for the taxable year may be computed by multiplying such unit value by the number of units of mineral extracted during the year. If, however, proper additions are made to the capital account represented by the original cost or value of the property, or unforeseen [extraordinary] circumstances necessitate a revised estimate of the number of mineral units in the ground, a new unit value for purposes of depletion may be found by dividing the capital account at the end of the year, less deductions for depletion to the beginning of the taxable year which have or should have been taken, by the number of units in the ground at the beginning of the taxable year. This number, unless a revision of the original estimate has been necessary, will equal the number of units in the ground at the date of original acquisition or valuation less

the number extracted prior to the taxable year. If, however, a recalculation is needed, the number of units at the beginning of the year will be the sum of the gross production of the year and the estimated mineral reserves in the property at the end of the year.

2939 Art. 211. Computation of Allowance for Depletion of Gas Wells.—On account of the peculiar conditions surrounding the production of natural gas it will be necessary to compute the depletion allowances for gas properties by methods suitable to the particular cases in question and acceptable to the Commissioner. Usually, the depletion of natural gas properties should be computed on the basis of decline in closed or rock pressure, taking into account the effects of water encroachment and any other modifying factors. [The following methods may also be used. In many fields more or less additional evidence on depletion is to be had from such considerations as (*a*) details of production (performance record of well or property); (*b*) decline in open flow capacity; (*c*) comparison with life histories of similar wells or properties, particularly those now exhausted; and (*d*) size of reservoir and pressure of gas. In using the closed pressure decline method, the pressure at which wells are abandoned may be subtracted from the observed pressures in order to determine the correct percentages. The estimates for properties in certain fields are subject to some further correction for various reasons, among which are (*a*) irregular encroachment of water or oil which reduces the rate of decline in pressure; (*b*) even though there be no encroachment of oil or water, the size of the reservoir remaining fixed, the pressure decline does not follow in exact and precise proportion to the amount withdrawn; and (*c*) as a rule less gas is marketed for 50 pounds of decline in the early history of the well than during the decline of a similar amount in the later history or after the pressure has become low.] The gas producer will be expected to compute the depletion as accurately as possible and submit with his return a description of the method by which the computation was made. The following formula, in which the units of gas are pounds per square inch of closed pressure may be used and is recommended: the quotient of the capital account recoverable through depletion allowances to the end of the taxable year, divided by the sum of the pressures at the beginning of the year less the sum of the pressures at the time of expected adandonment (which quotient is the unit cost), multiplied by the sum of the pressures at the beginning of the taxable year plus the sum of the pressures of new wells less the sum of the pressures at the end of the tax year, equals the depletion allowance.

2940 Art. 212. Gas Well Pressure Records to be Kept.—Beginning with 1919 closed pressure readings of representative wells, if not of all wells, must be carefully made and kept. In order to standardize pressure readings the well should remain closed until [such time as] the pressure *does* [will] not build up more than 1 per cent of the total pressure in 10 minutes. Ordinarily 24 hours will suffice for this purpose, but some wells will need to remain closed for a longer period. If there is any water in the well it should be blown or pumped off before the well is closed. A closed pressure reading of a gas well which has been producing, or is near gas wells that have been producing, is *lower than the actual pressure of the gas in the reservoir by an amount* [reduced to a greater or less extent,] depending on the *well's* [its] location *with reference to other producing wells* and the length of time it has been closed in. [To get readings most useful for tax purposes] It is necessary to record the length of time the well has been closed and to show how the

pressure built up during this period. *Successive* [Several] readings [at successive times] will [tend to] indicate the point at which the pressure becomes approximately stationary, that is, the point at which the closed pressure approaches as nearly as possible the maximum pressure which would be shown if *all wells* [the well and all others] in the pool were closed for several months. The length of time required varies [of course] with the character of the sand, position of the packer, the location of the well with reference to other wells, the limits of the pool, and other *factors* [considerations]. The depth of the well, diameter of tubing, and line pressure when the well was shut off, should be noted. Since readings at the exact end of the *taxable* [fiscal] year will ordinarily not be available, the pressure of that date may be obtained by interpolation or extrapolation. [or] In certain cases readings taken regularly in September or some other month may be applicable to the end of the *taxable* [fiscal or tax] year. As a general rule September closed pressure readings [taken regularly] furnish the best indication of depletion and it is recommended that such readings be made with [especial] regularity and care. Where interpolated *or extrapolated* readings are used the data from which they are obtained should be given. Gauges should be of appropriate capacity [considering the pressure to be measured] and should be frequently tested. *A* record should be kept of the number[*s*] of [the] gauges, *date each was* [dates the gauges were] tested, names of men testing, and other significant details.

2941 Art 213. Computation of Allowance Where Quantity of Oil or Gas Uncertain.—*If by reason of the youth of the field, the restricted production, or for any other cause, it is not possible to determine with any degree of certainty the quantity of oil or gas in a property, it will be necessary to make a tentative estimate which will apply until production figures are available from which an accurate determination may be made.* [If for any reason the quantity of oil or gas on the property can not be determined with any degree of certainty, thus precluding the use of the unit cost method of computing depletion, the depletion deduction may be computed in accordance with some other method or rule satisfactory to the Commissioner. In case any method other than the unit cost method is proposed to be used by the taxpayer in computing his depletion allowance, a full description of the method used must be submitted with the return, together with a summary of the figures or calculations pertaining to such computation.]

2942 Art 214. Computation of Depletion Allowance for Combined Holdings of Oil and Gas Wells.—(1) [*Oil properties.*—] The recoverable oil belonging to the taxpayer shall be estimated separately on the smallest unit on which data are available, such as individual wells or tracts, and these added together into a grand total to be applied to the total capital account returnable through depletion. The capital account shall include the cost or value, as the case may be, of all oil or gas leases or rights within the United States and its possessions, plus all incidental costs of development not charged as expense nor returnable through depreciation. The unit value of the total recoverable oil or gas is the quotient obtained by dividing the total capital account recoverable through depletion by the total estimated recoverable oil or gas. This unit multiplied by the total number of units of oil or gas produced by the taxpayer during the taxable year from all of the oil and gas properties will determine the amount which may be allowably deducted from the gross income of that year. [This total depletion allowance divided by the total capital account returnable through depletion will give the percentage of depletion

for the taxable year. This percentage must be applied to the capital account returnable through depletion of each separate leasehold and fee property included in the holdings of the taxpayer to find the proper amount deductible for depletion from the capital account of each tract at the end of the taxable year.]

2942a (2) [*Gas properties.*—] In the case of the gas properties of a taxpayer the depletion allowance for each pool may be computed by using the combined capital account returnable through depletion of all the tracts of gas land owned by the taxpayer in the pool and the average decline in rock pressures of all the taxpayer's wells in such pool [as] in the formula given in article 211. The total allowance for depletion of the gas properties of the taxpayer will be the sum of the amounts computed for each pool.

2943 **Art 215. Depletion of Mine Based on Advance Royalties.**—Where the owner has leased a mining property for a term of years with a requirement in the lease that the lessee shall mine and pay for annually a specified number of tons or other agreed units of measurement of such mineral, or shall pay annually a specified sum of money which shall be applied in payment of the purchase price or agreed royalty per unit of such mineral whenever the same shall thereafter be mined and removed from the leased premises, the value in the ground to the lessor for purposes of depletion of the number of units so paid for in advance of mining will constitute an allowable deduction from the gross income of the year in which such payment or payments shall be made; but no deduction for depletion by the lessor shall be claimed or allowed in any subsequent year on account of the mining or removal in such year of any ore or mineral so paid for in advance and for which deduction has been once made. If for any reason any such mining lease shall be terminated before the ore or mineral therein which has been paid for in advance has been mined and removed, and the lessor repossesses the leased property, an amount equal to the aggregate deductions for depletion allowed in respect of ore or mineral not mined and removed by the lessee, but still in the ground, will be deemed income to the lessor and will be returned as such for the year in which the property is repossessed.

2944 **Art. 216. Depletion and Depreciation Accounts on Books.**—Every taxpayer claiming and making a deduction for depletion and depreciation of mineral property shall keep accurate ledger accounts in which shall be charged the fair market value as of March 1, 1913, or within 30 days after the date of discovery, or the cost, as the case may be, (*a*) of the property, and (*b*) of the plant and equipment, together with such amounts expended for development of the property or additions to plant and equipment since that date as have not been *deducted* [allowed] as expense in his returns. These accounts shall be credited with the amount of the depreciation and depletion deductions claimed and allowed each year, or the amount of the depreciation and depletion shall be credited to depletion and depreciation reserve accounts, to the end that when the sum of the credits for depletion and depreciation equals the value or cost of the property, plus the amount added thereto for development or additional plant and equipment, less salvage value of the physical property, no further deduction for depletion and depreciation with respect to the property will be allowed. If dividends are paid out of a depletion or depreciation reserve, the stockholders must be expressly notified that the dividend is a return of capital and not an ordinary dividend out of profits. See article 1549.

2945 Art. 217. Statement to be Attached to Return Where Depletion of Mine Claimed.—To the return of the taxpayer claiming a deduction for depletion or depreciation or both there should be attached a statement setting out: (*a*) whether the owner is a fee owner or lessee or both; (*b*) a description of the property owned in fee, if any, and a description of the leasehold property, if any, including the date of acquisition and the date of expiration of the lease; (*c*) the fair market value as of March 1, 1913, or within 30 days of the date of discovery, or the cost, as the case may be, of the property owned in fee and the leasehold property, together with a statement of the precise method by which the value or the cost of freehold and leasehold property was determined; (*d*) the estimated number of units of mineral or ore at the date of acquisition or of valuation in the property owned in fee and in the leasehold property separately, together with an explanation of the method used in estimating in each case the number of units of mineral or ore for purposes of depletion; (*e*) the amount of capital applicable to each unit; (*f*) the number of units removed and sold during the year for which the return was made; (*g*) the total amount deducted on account of depletion and on account of depreciation, stated separately, up to the taxable year during the ownership of the taxpayer; and (*h*) any other data which would be helpful in determining the reasonableness of the depletion and depreciation deductions claimed in the return.

2946 Art. 218. Statement to be Attached to Return Where Depletion of Oil or Gas Claimed.—To each return made by a person owning or operating oil or gas properties, there should be attached a statement showing for each property the following information, which may be given in the form of a table, if desired, by taxpayers owning more than one property: (*a*) the fair market value of the property (exclusive of machinery, equipment, etc., and the value of the surface rights) as of March 1, 1913, if acquired prior to that date; or the fair market value of the property within 30 days after the date of discovery; or the actual cost of the property, if acquired subsequently to February 28, 1913, and not covered by the foregoing clause; (*b*) how the fair market value was ascertained, if the property came under the first or second head under (*a*); (*c*) the estimated quantity of oil or gas in the property at the time that the value of cost was determined; (*d*) the name and address of the person making the estimate and the manner in which this estimate was made, including a summary of the calculations; (*e*) the amount of capital applicable to each unit (this being found by dividing the value or cost, as the case may be, by the estimated number of units of oil or gas in the property at the time the value or cost was determined); (*f*) the quantity of oil or gas produced during the year for which the return is made (in the case of new properties it is desirable that this information be furnished by months); (*g*) the number of acres of producing and proven oil or gas land; (*h*) the number of wells producing at the beginning and end of the taxable year; (*i*) the date of completion of wells finished during the taxable year; (*j*) the date of abandonment of all wells abandoned during the taxable year; (*k*) a property map showing the location of the property and of the producing and abandoned wells, dry holes, and proven oil and gas land; (*l*) the average gravity of the oil produced on the tract; (*m*) the number of pay sands and average thickness of each pay sand or zone on the property; (*n*) the average depth to the top of each of the different pay sands; (*o*) any data regarding change in operating conditions, such as flooding, use of compressed air, vacuum, shooting, etc., which have a direct effect on the pro-

duction of the property; (*p*) the monthly or annual production of individual wells and the initial daily production of new wells (this is highly desirable information and should be furnished wherever possible); (*q*) (for the first year in which the above information is filed for a property which was producing prior to the taxable year covered by the above statement the following information must be furnished) annual production of the tract or of the individual wells, if the latter information is available, from the beginning of its productivity to the beginning of the taxable year for which the return was filed; the average number of wells producing during each year; and the initial daily production of each well; and (*r*) any other data which will be helpful in determining the reasonableness of the depletion deduction. When a taxpayer has filed adequate maps with the Commissioner he may be relieved of filing further maps of the same properties, provided all additional information necessary for keeping the maps up to date is filed each year. This includes records of dry holes, as well as producing wells, together with logs, depth and thickness of sands, location of new wells, etc. By "production" is meant *the net* [gross] production of [all] oil or gas *belonging to the taxpayer* [recovered from the wells and tanked or utilized]. In those leases where no account is kept of the oil or gas used for fuel, the [gross] production will necessarily be that remaining after the fuel used in the property has been taken out. In cases of this kind an estimate of the fuel used from each tract should be given for each year.

2947 139 1098 **Art. 219. Discovery of Mine.**—The discovery of a mine or a natural deposit of mineral, whether it be made by an owner of the land or by a lessee, shall be deemed to mean (*a*) the bona fide discovery of a commercially valuable deposit of ore or mineral of a value materially in excess of the cost of discovery in natural exposure or by drilling or other exploration conducted above or below ground, or (*b*) the development and proving of a mineral *or* ore deposit which has been abandoned or apparently worked out, or sold, leased or otherwise disposed of, by an owner or lessee prior to the development of a body of ore or mineral of sufficient size, quality and character to determine it, in connection with the physical and geological conditions of its occurrence, to be a minable deposit of ore or mineral having a value materially in excess of the cost of the proving and development. In determining whether a discovery has been made the Commissioner will take into account the peculiar conditions of the case, and every taxpayer claiming the value of a mineral deposit on the date of discovery or within 30 days thereafter for purposes of depletion will be required to attach to his return a statement setting forth the conditions and circumstances of the discovery and the size, character and location of the deposit, together with the cost of discovery, its value and the precise method used in determining the value.

2948 139 1098 **Art. 220. Discovery of Oil and Gas Wells.**—In order to take advantage of his discovery on or after March 1, 1913, of oil or gas wells, the taxpayer must show (*a*) that the tract for which such valuation is claimed was not proven oil land as to the particular sand or zone discovery of which is claimed at the time the so-called discovery was made, proven oil land being that which has been shown by finished wells, supplemented by geologic data, to be such that other wells drilled thereon are practically certain to be commercial producers; (*b*) that the discovery was a bona fide discovery of a commercial well of oil or gas or both of these substances on the property in question, a commercial well being one whose production is such as to offer a reasonable expectation of

at least returning the capital invested in such well through the sale of the oil or gas or both derived therefrom during its economic life; and (*c*) that the fair market value of the property was materially in excess of the cost.

2949 **Art. 221. Proof of Discovery of Oil and Gas Wells.**—In order to meet the requirements of the preceding article to the satisfaction of the Commissioner the taxpayer will be required, among other things, to submit the following with his return: (*a*) a map of convenient scale, showing the location of the tract and discovery well in question and of the nearest producing well, and the development for a radius of at least 3 miles from the tract in question, both on the date of discovery and on the date when the fair market value was set; (*b*) a certified copy of the log of the discovery well, showing the location, the date drilling began, the date of completion and beginning of production, the formations penetrated, the oil, gas and water sands penetrated, the casing record, *including the record of perforations*, and any other information tending to show the condition of the well *and the location of the sand or zone from which the oil or gas is produced* on the date the discovery was claimed; (*c*) the logs of enough other wells drilled prior to the date of completion of the discovery in the vicinity of the discovery well to convince the Commissioner that the sand or zone discovery of which is claimed was not known prior to the so-called discovery; (*d*) a sworn record of production, clearly proving the commercial productivity of the discovery well; (*e*) a sworn copy of the records, showing the cost of the property; and (*f*) a full explanation of the method of determining the value on the date of discovery or within 30 days thereafter, supported by satisfactory evidence of the fairness of this value.

9250 **Art. 222. Charges to Capital and to Expense in the Case of Mine.**—In the case of mining operations all expenditures for plant, equipment, development, rent and royalty prior to production, and thereafter all major items of plant and equipment, shall be charged to capital account for purposes of depletion and depreciation. After a mine has been developed and equipped to its normal and regular output capacity, however, the cost of additional minor items of equipment and plant, including mules, motors, mine cars, trackage, cables, trolley wire, fans, small tools, etc., necessary to maintain the normal output because of increased length of haul or depth of working consequent on the extraction of mineral, and the cost of replacements of these and similar minor items of worn-out and discarded plant and equipment, may be charged to current expense of operations, *unless the taxpayer elects to write off such expenditures through charges for depreciation.*

2951 **Art. 223. Charges to Capital and to Expense in the Case of Oil and Gas Wells.**—Such incidental expenses as are paid for wages, fuel, repairs, hauling, etc., in connection with the exploration of the property, drilling of wells, building of pipe lines, and development of the property may at the option of the taxpayer be deducted as an operating expense or charged to the capital account returnable through depletion. If in exercising this option the taxpayer charges these incidental expenses to capital account, in so far as such expense is represented by physical property it may be taken into account in determining a reasonable allowance for depreciation. The cost of drilling nonproductive wells may at the option of the operator be deducted from gross income as an operating expense or charged to capital account returnable through depletion and depreciation as in the case of productive wells. *An election once made under this option will control the taxpayer's returns for all subsequent years.* Casing-

head-gas contracts have been construed to be tangible assets and their cost may be added to the capital account returnable through depletion, following the rate set by the oil wells from which the gas is derived, or, if the life of the contract is shorter than the reasonable expectation of the life of the wells furnishing the gas, the capital invested in the contract may be written off through yearly allowances equitably distributed over the life of the contract. All oil produced during the taxable year, whether sold or unsold, must be considered in the computation of the depletion allowance for *that* [the taxable] year. *In computing net income all oil in storage at the beginning and at the end of the taxable year must be inventoried at cost, that is, unit cost plus lifting cost. Where deductions for depreciation or depletion have either on the books of the taxpayer or in his returns of net income been included in the past in expense or other accounts, rather than specifically as depreciation or depletion, or where capital expenditures have been charged to expense in lieu of depreciation or depletion, a statement indicating the extent to which this practice has been carried should accompany the return.*

2952 **Art. 224. Depreciation of Improvements in the Case of Mine.**—It shall be optional with the taxpayer, subject to the approval of the Commissioner, (*a*) whether the cost or value of the mining property, including ores and minerals, plant and equipment, and charges and additions to capital account not charged to expense and deducted as expense on the returns of the taxpayer, shall be recovered at a rate established by current exhaustion of mineral, or (*b*) whether the cost or value of the mineral and charges to capital account of expenditures other than for physical property shall be recovered by appropriate charges based on depletion and the cost or value of plant and equipment shall be recovered by reasonable charges for depreciation calculated by the usual rules for depreciation or according to the peculiar conditions of the taxpayer's case by a method satisfactory to the Commissioner. Nothing in these regulations shall be interpreted to mean that the value of a mining plant and equipment may be reduced by depreciation or depletion deductions to a sum below the value of the salvage when the property shall have become obsolete or shall have been abandoned for the purpose of mining, or that any part of the value of land for purposes other than mining may be recoverable through depletion or depreciation.

2953 **Art. 225. Depreciation of Improvements in the Case of Oil and Gas Wells.**—Both owners and lessees operating oil or gas properties will, in addition to and apart from the deduction allowable for the depletion or return of capital as hereinbefore provided, be permitted to deduct a reasonable allowance for depreciation of physical property, such as machinery, tools, equipment, pipes, etc., so far as not in conflict with the option exercised by the taxpayer under article 223. The amount deductible on this account shall be such an amount based upon its *cost or fair market value as of March* 1, 1913 [capitalized value or cost] equitably distributed over its useful life as will bring such property to its true salvage value when no longer useful for the purpose for which such property was acquired. Accordingly, where it can be shown to the satisfaction of the Commissioner that the reasonable expectation of the economic life of the oil or gas deposit with which the property is connected is shorter than the normal useful life of the physical property, the amount annually deductible for depreciation may for such property be based upon the length of life of the deposit. See articles 161–170.

2954 **Art. 226. Depletion and Depreciation of Oil and Gas Wells in Years Before 1916.**—If upon examination it is found that in respect of the entire drilling cost of wells, including physical property and incidental expenses, between March 1, 1913, and December 31, 1915, a taxpayer has been allowed a reasonable deduction sufficient to provide for the elements of exhaustion, wear and tear, and depletion, it will not be necessary to reopen the returns for years prior to 1916 in order to show separately in these years the portions of such deduction representing depletion and depreciation, respectively. Such separation will be required to be made of the reserves for depreciation at January 1, 1916, and proper allocation between depreciation and depletion must be maintained after that date. In any case in which it is found that the deductions taken between March 1, 1913, and December 31, 1915, are not reasonable, amended returns may be required for these years. *See article* 839.

2955 **Art. 227. Depletion of Timber.**—A reasonable deduction from
2209 gross income for the depletion of timber and for the depreciation of improvements is permitted, based (a) upon cost if acquired after February 28, 1913, or (b) upon the fair market value as of March 1, 1913, if acquired prior thereto. The essence of this provision is that the owner of timber property, whether it be a leasehold or a freehold, shall secure through an aggregate of annual depletion and depreciation deductions a return of the amount of capital invested by him in the property, or in lieu thereof an amount equal to its fair market value as of March 1, 1913, plus in any case the subsequent cost of plant, equipment and development which is not chargeable to current operating expenses, but not including cut-over land values.

2956 **Art. 228. Capital Recoverable Through Depletion Allowance In the Case of Timber.**—In general, the capital remaining in any year recoverable through depletion allowances may be determined as indicated in articles 202 and 203. In the case of leases the apportionment of deductions between the lessor and lessee should be made as specified in article 204. Where it becomes necessary to determine the cost or fair market value as of March 1, 1913, of the property, the rules laid down in articles 205 and 206 should be followed so far as possible.

2957 **Art. 229. Computation of Allowance for Depletion of Timber.**—An allowance for the depletion of timber in any taxable year shall be based upon the number of feet of stumpage cut during the year and the unit cost of the stumpage at the date of acquisition or the unit market value on March 1, 1913, if acquired prior thereto. The unit market value as of March 1, 1913, shall be the unit price at which the standing timber in its then condition and in view of its then environment could have been sold for cash or its equivalent. The amount of the deduction for depletion in any taxable year shall be the product of the number of feet of stumpage cut during the year multiplied by such unit cost or market value of the stumpage.

2958 **Art. 230. Revaluation of Stumpage Not Allowed.**—The fair market value of stumpage when determined as of March 1, 1913, for the purpose of depletion allowances in the case of timber acquired prior thereto, shall be the basis for determining the depletion deduction for each year during the continuance of the ownership under which the fair market value of the stumpage was fixed, and during such ownership there can be no redeter-

mination of the fair market value of the stumpage for such purpose. However, the unit market value of stumpage adopted by the taxpayer may subsequently be changed if from any cause such value, if continued as a basis of depletion, should upon evidence satisfactory to the Commissioner be found inadequate or excessive for the extinguishment of the fair market value of the timber as of March 1, 1913.

2959 **Art. 231. Charges to Capital and to Expense in the Case of Timber.**—In the case of timber operations all expenditures for plant, equipment, development, rent and royalty prior to production, and thereafter all major items of plant and equipment, shall be charged to capital account for purposes of depreciation. After a timber operation and plant has been developed and equipped to its normal and regular output capacity, the cost of additional minor items of equipment and the cost of replacement of minor items of worn-out and discarded plant and equipment may be charged to current expenses of operations.

2960 **Art. 232. Depreciation of Improvements in the Case of Timber.**—The cost or value as of March 1, 1913, as the case may be, of development not represented by physical property having an inventory value, and such cost or value of all physical property which has not been deducted and allowed as expense in the returns of the taxpayer, shall be recoverable through depreciation. It shall be optional with the taxpayer, subject to the approval of the Commissioner, (a) whether the cost or value, as the case may be, of the property subject to depreciation shall be recovered at a rate established by current exhaustion of stumpage, or (b) whether the cost or value shall be recovered by appropriate charges for depreciation calculated by the usual rules for depreciation or according to the peculiar conditions of the taxpayer's case by a method satisfactory to the Commissioner. In no case may charges for depreciation be based on a rate which will extinguish the cost or value of the property prior to the termination of its useful life. Nothing in these regulations shall be interpreted to mean that the value of a timber plant and equipment, so far as it is represented by physical property having an inventory value, may be reduced by depreciation deductions to a sum below the value of the salvage when the plant and equipment shall have become obsolete or worn out or shall have been abandoned, or that any part of the value of cut-over land may be recoverable through depreciation.

2961 **Art. 233. Statement to Be Attached to Return Where Depletion of Timber Claimed.**—To the return of the taxpayer claiming a deduction for depletion or depreciation or both there should be attached a statement setting out (a) whether the owner is an owner in fee or a lessee or both; (b) a description of the property owned in fee, if any, and a description of the leasehold property, if any, including the date of acquisition and the date of expiration of the lease; (c) the cost of the freehold and the leasehold property; (d) the number of feet of timber removed and sold during the year for which the return was made; (e) the total amount deducted on account of depletion and on account of depreciation, stated separately, up to the taxable year during the ownership of the taxpayer; and (f) any other data which would be helpful in determining the reasonableness of the depletion and depreciation deductions claimed in the return. The taxpayer shall keep accurate ledger accounts as outlined in article 216, and in general should comply with the requirements of the foregoing articles relating to the depletion of mines and oil and gas wells so far as applicable.

DEDUCTIONS ALLOWED-CHARITABLE CONTRIBUTIONS

2962 Art. 251. **Charitable Contributions.**—Contributions or gifts within
142 the taxable year are deductible to an aggregate amount not in
1102 excess of fifteen per cent of the taxpayer's net income including such payments, if made (a) to corporations *or associations* of the kind exempted from tax by subdivision (6) of section 231 of the statute or (*b*) to the special fund for vocational rehabilitation under the Vocational Rehabilitation Act of June 27, 1918. For a discussion of what corporations *and associations* are included within (a) see article 517. *A gift to a common agency (as a war chest) for several such corporations or associations is treated like a gift directly to them.* In connection with claims for this deduction there shall be stated on returns of income the name and address of each *organization* [corporation or fund] to which a gift was made and the *approximate* date and *the* amount of the gift in each case. Where the gift is other than money, the basis for calculation of the amount of the gift shall be the fair market value of the property at the time given. A gift of real estate to a city to be maintained perpetually as a public park is not an allowable deduction. *This article does not apply to gifts by partnerships, estates and trusts, or corporations. See sections* 218 *and* 219 *of the statute and articles* 561 *and* 562.

DEDUCTIONS ALLOWED: LOSS IN INVENTORY.

[The old provisions follow at the end of the new matter, in italics, below.]

2963 Art. 261. **Losses in Inventory and From Rebates.**—*Taxpayers are*
144 *allowed deductions from net income for the taxable year* 1918 *for losses*
1119 *resulting (a) from material reductions after the close of the taxable year* 1918 *of the values of inventories for such taxable year, and (b) from actual payments after the close of the taxable year* 1918 *of rebates in pursuance of contracts entered into during such year upon sales made during such year. The taxable year of the taxpayer, whether calendar or fiscal, is meant in every case. Such deductions may be secured by two methods, either by a claim in abatement or by a claim for refund, and must not be entered upon the regular return.*

2963a Art. 262. **Loss from Rebates.**—*Where after the close of the taxable year* 1918 *rebates have been bona fide paid in pursuance of contracts entered into during such year upon sales made during such year, the net income for that year may be reduced by the deduction of the amount of such rebates actually paid. No such deduction will be allowed unless the profits from such sales have been included in the income for the taxable year* 1918.

2963b Art. 263. **Loss in Inventory.**—*Inventory losses are allowable either (a) where goods included in an inventory at the end of the taxable year* 1918 *have been sold at a loss during the succeeding taxable year, or (b) where such goods remain unsold throughout the taxable year* 1919 *and at its close have a then market value (not resulting from a temporary fluctuation) materially below the value at which they were inventoried at the end of the taxable year* 1918. *No deduction is allowable for losses of anticipated profits or for losses not substantial in amount, nor for physical damage or obsolescence occurring in the taxable year* 1919. *In determining whether goods included in an inventory at the end of the taxable year* 1918 *have been sold during the succeeding taxable year, and whether loss has resulted therefrom, sales of goods made in the taxable year* 1919 *will be deemed to have been made from the inventoried stock of* 1918 *until such inventoried stock is exhausted.*

2963c Art. 264. Loss Where Goods Have Been Sold.—*Where goods included in the inventory at the end of the taxable year* 1918 *have been sold during the succeeding taxable year, the loss which may be deducted from net income for the taxable year* 1918 *is the amount by which the value at which the goods sold were included in the inventory exceeds the actual selling price minus a reasonable allowance for selling expenses and for manufacturing expenses, if any, incurred in the taxable year* 1919 *and attributable to such goods.*

2963d Art. 265. Loss Where Goods Have Not Been Sold.—*Where goods included in the inventory at the end of the taxable year* 1918 *have not been sold during the succeeding taxable year, the loss which may be deducted from net income for the taxable year* 1918 *is the amount by which the net income for such year would be reduced if the inventory were redetermined and such goods taken at their market value (ignoring mere temporary fluctuations of value) at the end of the taxable year* 1919.

2963e Art. 266. Claims.—*Claims in abatement should be filed with the collector on form* 47 *when the return for the taxable year* 1918 *is made. Claims for refund should be filed on form* 46 *not later than* 30 *days after the close of the taxable year* 1919. *Each claim shall contain a concise statement of the amount of the loss sustained and the basis upon which it has been computed, together with all pertinent facts necessary to enable the Commissioner to determine the allowability of the claim. The amount allowed by the Commissioner in respect of any such claim shall be deducted from the net income for the taxable year* 1918 *and the taxes shall be recomputed accordingly. Any excess paid over the tax due shall be credited or refunded to the taxpayer. See section* 252 *of the statute and articles* 1031–1038. *In computing income for the taxable year* 1919 *the opening inventory must be properly adjusted by the taxpayer in respect of any claim allowed for the year* 1918 *under this article.*

2963f Art. 267. Disposition of Claims.—*A claim for loss resulting from rebates paid or from actual sales will be decided as soon as practicable after it has been filed. A claim for loss in inventory not realized by sale will be decided only after the close of the taxable year* 1919 *upon the basis of any permanent reduction in the level of market values which may occur during such year from the inventory values taken at the close of the taxable year* 1918. *Not later than thirty days after the close of the taxable year* 1919 *a taxpayer who has filed either a claim in abatement or a claim for refund, or both, shall submit to the Commissioner a descriptive statement showing the quantity and kind of all goods included in the* 1918 *inventory which have been (a) sold at a loss in the taxable year* 1919, *(b) sold at a profit during the taxable year* 1919, *or (c) not sold or otherwise disposed of during the taxable year* 1919, *together with such other information in respect of such goods as the Commissioner may require. A claim filed with the return for a loss not then realized by sale will be passed upon in the light of any sales thereafter made during the taxable year* 1919. *A claim filed with the return is authorized for the purpose of allowing the taxpayer to utilize, where justified, a preliminary allowance for inventory losses and not to provide a deduction essentially different from that taken by way of a claim filed at the end of the taxable year* 1919.

2963g Art. 268. Effect of Claim in Abatement.—*In the case of a claim in abatement filed with a return payment of the amount of the tax covered thereby shall not be required until the claim is decided, provided the taxpayer files therewith a bond on form* 1124 *in double the amount of the tax covered by the claim, conditioned for the payment of any part of such tax found to be due*

with interest at the rate of 12 *per cent per annum. The bond shall be executed by a surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on federal bonds and shall be subject to the approval of the Commissioner. See also section* 1320 *of the statute. If abatement of any part of the tax covered by such a claim is denied, then such part shall be paid by the taxpayer with interest at the rate of* 12 *per cent per annum from the original due date of the tax.*

[Art. 261. **Loss In Value of Inventory.**—Losses under this paragraph relate only to a redetermination of the value of inventories taken at the close of the taxable year 1918. Such redetermination of value may be made (a) before the date of filing a return for that year, in which case the c aim should be filed with the return, or (b) if no such claim is filed with the return, a claim may be filed subsequently thereto with the collector. Each claim should state the name and address of the taxpayer and should contain a concise statement of the amount of the loss sustained and the basis upon which it has been computed, together with all pertinent facts necessary to enable the Commissioner to determine the allowability of the claim. Each claim should be supported by an affidavit, and after one claim has been allowed no further claim can be considered. To be allowed such inventory loss must be substantial in amount and represent either (a) a realization by sale of goods taken in the inventory or (b) a shrinkage in market price (and such shrinkage must show sound evidence of permanency) of goods taken in the inventory and unsold at the date of the claim. In determining whether a loss has been realized by the sale of goods taken in the inventory, all sales made subsequent to the date of the inventory will be deemed to have been made from the inventoried stock until such inventoried stock is exhausted. No claim will be allowed for any loss of anticipated profits. Claims may also be made for a deduction from income of the taxable year 1918 of the amounts of payments actually made after the close of such taxable year on account of rebates in pursuance of contracts entered into during such year upon sales made during such year. In any case where payment of the tax has not been made prior to the filing of the claim no such payment shall be required upon the income covered by such claim until the claim is decided, but in such case the taxpayer shall accompany his claim with a bond in double the amount of the tax covered by the claim, with sureties satisfactory to the Commissioner, conditioned for the payment of any part of such tax found to be due. If any part of such claim is disallowed, then the remainder of the tax due shall bear interest at the rate of one per cent per month from the time the tax would have been due had no such claim been filed. The amount allowed by the Commissioner in respect of any such claim shall be deducted from the net income for the taxable year 1918, and the taxes shall be recomputed accordingly and the excess of tax due, if any, shall be credited or refunded to the taxpayer. See section 252 of the statute and articles 1031–1036. In computing income for the taxable year 1919, the opening inventory must be properly adjusted by the taxpayer in respect of any claim allowed for the year 1918 under this article. Goods taken in the inventory which have been so intermingled that they can not be identified with specific invoices will be deemed to be the goods most recently purchased.]

DEDUCTIONS ALLOWED-NONRESIDENT ALIEN INDIVIDUAL

2964 Art. 271. **Deductions Allowed Nonresident Alien Individuals.**—
149 In the case of a nonresident alien individual the deduction for
529 interest paid or accrued is proportionate to his income from sources within the United States (see paragraph (2) of subdivision (a) of

section 214 of the statute); for losses incurred in any transaction entered into for profit, or arising from casualty or theft, is confined to transactions and property within the United States (5), (6); for charitable contributions excludes gifts to foreign corporations (11); and for business expenses, taxes imposed by a foreign country, losses in trade, bad debts, depreciation, amortization, depletion, and loss in inventory (1), (3), (4), (7), (8), (9), (10) and (12), is allowed only if and to the extent that it is connected with income arising from a source within the United States. See articles 91 *and* 311–316. *As to deductions allowed foreign corporations, see section* 234 (*b*) *of the statute and article* 573.

ITEMS NOT DEDUCTIBLE.

2965 **Art. 291. Personal and Family Expenses.**—Insurance paid on a
152 dwelling owned and occupied by a taxpayer is a personal expense.
1024 Premiums paid for life insurance by the insured are not deductible.
2881a In the case of a professional man who rents a property for residential purposes, but incidentally receives there clients, patients or callers in connection with his professional work (his place of business being elsewhere), no part of the rent is deductible as a business expense. *If, however, he uses part of the house for his office, such portion of the rent as is properly attributable to such office is deductible.* The father is legally entitled to the services of his minor children, and allowances which he gives them, whether said to be in consideration of services or otherwise, are not allowable deductions in his return of income. *Alimony and an allowance paid under a separation agreement are not deductible from gross income. See article* 73. *The cost of the equipment of an army officer to the extent only that it is specially required by his profession and does not merely take the place of articles required in civilian life is deductible. Accordingly, the cost of a sword is an allowable deduction, but the cost of a uniform is not.*

2966 **Art. 292. Traveling Expenses.**— *Traveling expenses, as ordinarily understood, include railroad fares and meals and lodging. If the trip is undertaken for other than business purposes, such railroad fares are personal expenses and such meals and lodging are living expenses. If the trip is on business, the railroad fares become business instead of personal expenses but the meals and lodging continue to be living expenses and are not deductible in computing net income.* (*a*) *If, then, an individual whose business requires him to travel receives a salary as full compensation for his services, without reimbursement of traveling expenses, his expenses for railroad fares, but not for meals and lodging, are deductible from gross income.* (*b*) *If such an individual receives a salary and is also repaid his actual traveling expenses, no part of such expenses, is deductible from gross income and no part of such repayment is returnable as income.* (*c*) *If such an individual receives a salary and also an allowance for meals and lodging, as, for example, a per diem allowance in lieu of subsistence, any excess of the cost of such meals and lodging over the allowance is not deductible, but any excess of the allowance over the actual expenses is taxable income. Congressmen and others who receive a mileage allowance for railroad fares should return as income any excess of such allowance over their actual expenses for such fares. A payment for the use of a sample room at a hotel for the display of goods is a business expense.* [**Living Expenses.**—Living expenses are in no event allowable deductions even though incurred in the carrying on of business. Amounts paid out for expenses for meals and lodging and the like by salesmen, actors, and others traveling in the course of their employment are their living expenses and can not be deducted from gross income. Amounts which

are paid out for expenses incident to services rendered and which are reimbursable are not deductible as expenses, nor are the sums received as reimbursement for them to be returned as income. Any excess of a per diem allowance in lieu of subsistence while under traveling orders over living expenses is taxable income. Amounts paid from a salary received for all services rendered and expenses incurred are deductible as business expenses when the expenditures are occasioned by the services in respect of which the salary is paid. A salesman who has to pay for the use of a sample room at a hotel for the display of his goods is entitled to deduct such payment as a business expense, and a traveling man or actor is entitled to deduct railroad fares paid to enable him to move about in carrying on his occupation.]

2967 **Art. 293. Capital Expenditures.**— *Amounts paid for increasing the capital value or for restoring the depreciated value of property are not deductible from gross income. See section* 214 (*a*) (8) *of the statute and article* 161. **Amounts expended for securing a copyright and plates, which remain the property of the person making the payments, are investments of capital. *The cost of defending or perfecting title to property constitutes a part of the cost of property and is not a deductible expense. *The amount expended for architect's services is part of the cost of the building. *Commissions paid in purchasing securities are a part of the cost price of such securities. *Commissions paid in selling securities are an offset against the selling price. *Expenses of the administration of an estate, such as court costs, attorney's fees and executor's commissions, are chargeable against the corpus of the estate and are not allowable deductions. *Amounts to be assessed and paid under an agreement between bondholders or stockholders of a corporation, to be used in a reorganization of the corporation, are investments of capital and not deductible for any purpose in returns of income. See article* 543. *An assessment paid by a stockholder of a national bank on account of his statutory liability is similarly not deductible. As to items not deductible by corporations, see section* 235 *and articles* 581 *and* 582. [Amounts expended for additions and betterments or for furniture and fixtures, which constitute an increase in capital investment and add to the value of the assets, are not a proper deduction, but such expenditures when capitalized may be reduced through annual depreciation deductions.]

*Verbatim as in Art. 112, preliminary edition. See ¶2894.

2967a **Art. 294. Premiums on Business Insurance.**— *Where the taxpayer*
155 *pays premiums on an insurance policy on the life of an officer, employee*
1028 *or individual financially interested in the taxpayer's business, for the purpose of protecting himself from loss in the event of the death of any such person, such premiums are not deductible from his gross income. But if the taxpayer is in no sense a beneficiary under such a policy, except as he may derive advantage from the increased efficiency of the employee, and pays the premiums purely as reasonable additional compensation of such employee, they are allowable deductions. See articles* 33 *and* 105–108. *In either case whether the proceeds of such policies paid upon the death of the insured may be excluded from gross income or must be included therein depends upon whether the beneficiary is an individual or a corporation. See section* 213 (*b*) (1) *and articles* 72 *and* 541.

CREDITS ALLOWED.

2968 **Art. 301. Credits Against Net Income.**—For the purpose of im-
156 posing the normal tax the taxpayer's net income as computed
1124 pursuant to section 212 of the statute and articles 21–26 is first reduced by the sum of the allowable credits. These include divi-

dends (as defined in section 201 [of the statute] and articles 1541–1549) received *other than* from *foreign* [domestic or resident] corporations *having no income from sources within the United States;* interest not entirely exempt from tax received upon *obligations of the* United States and *bonds of the* War Finance Corporation [bonds]; a personal exemption; and a credit for dependents. *Consequently, the normal tax does not apply to dividends from domestic corporations or from foreign corporations deriving income from sources within the United States, or to interest on any obligations of the United States. See section* 213 (*b*) *of the statute and articles* 77–82 *and* 1131. For the purpose of imposing the surtax the taxpayer's net income is entitled to none of these credits. *As to credits allowed corporations, see section* 236 *and article* 591.

2969 **Art. 302. Personal Exemption of Head of Family.**—A head of a
160 family is a person who actually supports and maintains in one
1129 household one or more individuals who are closely connected with him by blood relationship, relationship by marriage, or by adoption, and whose right to exercise family control and provide for these dependent individuals is based upon some moral or legal obligation. In the absence of continuous actual residence together, whether or not a person with dependent relatives is a head of a family within the meaning of the statute must depend on the character of the separation. If a father is absent on business or at war, or a child or other dependent is away [only temporarily] at school or on a visit, the common home being still maintained, the additional exemption applies. *If, moreover, through force of circumstances a parent is obliged to maintain his dependent children with relatives or in a boarding house while he lives elsewhere, the additional exemption may still apply.* If, however, *without necessity* the dependent continuously makes his home elsewhere, his benefactor is not the head of a family, irrespective of the question of support. A resident alien with children abroad is not the head of the family.

2970 **Art. 303. Personal Exemption of Married Person.**—In the case
160 of a married man or married woman the joint exemption replaces
1129 the individual exemption only if the man lives with his wife or the woman lives with her husband. In the absence of continuous actual residence together, whether or not a man or woman has a wife or husband living with him or her within the meaning of the statute must depend on the character of the separation. If merely occasionally and temporarily a wife is away on a visit or a husband is away on business, the joint home being maintained, the additional exemption applies. The unavoidable absence of a wife or husband at a sanatorium or asylum on account of illness does not preclude claiming the exemption. If, however, the husband voluntarily and continuously makes his home at one place and the wife hers at another, they are not living together for the purpose of the statute, irrespective of their personal relations. A resident alien with a wife residing abroad is not entitled to the *joint* [$2,000] exemption.

2971 **Art. 304. Credit for Dependents.**—A taxpayer receives a credit
163 of $200 for each person (other than husband or wife), whether
1138 related to him or not and whether living with him or nor, dependent upon and receiving his chief support from the taxpayer, provided the dependent is either (a) under 18 or (b) incapable of self-support because defective. The credit is based upon actual financial dependency and not mere legal dependency. It may accrue to a taxpayer who is not the head of a family. But a father whose children receive half or more of their support from a trust fund or other separate source is not entitled to the credit.

2971a Art. 305. Date Determining Exemption.—*The status of the taxpayer*
1140 *on the last day of his taxable year determines his right to an addi-*
1141 *tional exemption and to a credit for dependents. If then he is the*
3245 *head of a family, the personal exemption of* $2,000 *may be taken.*

If then he is the chief support of a dependent who is under eighteen years of age or incapable of self-support because mentally or physically defective, the credit of $200 *may be taken. But an unmarried individual or a married individual not living with husband or wife, who during the taxable year has ceased to be the head of a family or to have dependents, is entitled only to the personal exemption of* $1,000 *allowed a single person. A husband and wife living together at the end of the taxable year may receive but one personal exemption of* $2,000, *divisible as they please, against their aggregate net income. If an individual dies during the taxable year, his executor or administrator in making a return for him is entitled to claim his full personal exemption according to his status at the time of his death. See also section* 219 (*c*) *of the statute and articles* 346 *and* 421. *If a husband or wife so dies and the joint personal exemption is used by the executor or administrator in making a return for the decedent, an undiminished personal exemption according to the status of the survivor at the end of the taxable year may be claimed in the survivor's return. If a taxpayer makes a return for a period other than a taxable year, the last day of such period shall be treated as the last day of the taxable year for the purpose of this article. See section* 226 *and articles* 431 *and* 1013.

2972 Art. 306 [Art. 305]. Credits to Nonresident Alien Individual.—*A*
164 *nonresident alien individual, similarly to a citizen or resident, is*
537 *entitled for the purpose of the normal tax to credit dividends from domestic or resident foreign corporations, interest on obligations of the United States, a personal exemption, and* $200 *for each dependent, except that if he is a citizen or subject of a country which imposes an income tax a personal exemption or credit for dependents is allowed him "only if such country allows a similar credit to citizens of the United States not residing in such country." "If such country allows a similar credit" means if such country in imposing its income tax allows a personal exemption or a credit for dependents, as the case may be, and allows it without discrimination to citizens of the United States not residing in such country. For the meaning of "country" see article* 382. *To satisfy the requirement of a similar credit it is not necessary that the personal exemption or credit for dependents, as the case may be, should be the same as that allowed by the United States statute. The status as to residence of an alien individual on the last day of his taxable year determines his right to be treated as a resident or as a nonresident for such year.* [A nonresident alien individual, similarly to a citizen or resident, is entitled for the purpose of the normal tax to credit corporate dividends, interest on obligations of the United States, a personal exemption, and $200 for each dependent, except that in the last two cases if he is a citizen or subject of a country which imposes an income tax the credit is allowed only if his country allows a similar credit to citizens of the United States not residing in such country. By "similar credit" is meant the same personal exemption or credit for dependents to citizens of the United States as is allowed citizens of such country, not necessarily the same amount as in the United States statute.]

2972a Art. 307. When Nonresident Alien Individual Entitled to Personal
3274 Exemption.—(*a*) *The following is an incomplete list of countries which either impose no income tax or in imposing an income tax allow both a personal exemption and a credit for dependents which satisfy the similar credit requirement of the statute: Argentina; Bosnia; Brazil; Canada; Carinthia; China; Cuba; Dalmatia; Denmark; France; Herzegovina; Istria; Mexico;*

Montenegro; Persia; Portugal; Roumania; Russia; Serbia; Union of South Africa. (b) The following is an incomplete list of countries which in imposing an income tax allow a personal exemption which satisfies the similar credit requirements of the statute, but do not allow a credit for dependents: Bachka; Banat of Temesvar; Croatia; Italy; Slavonia. (c) The following is an incomplete list of countries which in imposing an income tax do not allow to citizens of the United States not residing in such country either a personal exemption or a credit for dependents and, therefore, fail entirely to satisfy the similar credit requirement of the statute: Australia; Great Britain and Ireland; Japan; New Zealand; Spain. The former names of certain of the territories are here used for convenience, in spite of an actual or possible charge in name or sovereignty. A nonresident alien individual who is a citizen or subject of any country in the first list is entitled for the purpose of the normal tax to such credit for a personal exemption and for dependents as his family status may warrant. If he is a citizen or subject of any country in the second list he is entitled to a credit for a personal exemption, but to none for dependents. If he is a citizen or subject of any country in the third list he is not entitled to credit for either a personal exemption or for dependents. If he is a citizen or subject of a country which is in none of the lists, then to secure credit for either a personal exemption or for dependents he must prove to the satisfaction of the Commissioner that his country does not impose an income tax or that in imposing an income tax it grants the similar credit required by the statute.

NONRESIDENT ALIENS—ALLOWANCE OF DEDUCTIONS AND CREDITS.

2973 165 538 **Art. 311 [315]. Allowance of Deductions and Credits to Nonresident Alien Individual.**—Unless a nonresident alien individual shall render a return of income as required in article 404, the tax shall be collected on the basis of his gross income (not his net income) from sources within the United States. Where a nonresident alien has various sources of income within the United States, so that from any one source or from all sources combined the amount of income shall call for the assessment of a surtax, and a return of income shall not be filed by him or on his behalf the Commissioner will cause a return of income to be made and include therein the income of such nonresident alien from all sources concerning which he has information, and he will assess the tax and collect it from one or more of the sources of income within the United States of such nonresident alien, without allowance for deductions or credits. The benefit of the credits allowed against net income for the purpose of the normal tax may not be received by a nonresident alien by filing a claim with the withholding agent, but only by claiming them upon filing a return of income, *except as permitted in article* 316. *See section* 216 *of the statute and articles* 306 *and* 307.

2973a **Art. 312 [Art. 311]. Who is a Nonresident Alien Individual.**—"Nonresident alien individual" means an individual (a) whose residence is not within the United States and (b) who is not a citizen of the United States. Any alien living in the United States who is not a mere transient is a resident of the United States for purposes of the income tax. Whether he is a transient or not is determined by his intentions with regard to his stay. *If he lives in the United States and has no definite intention as to his stay, he is a resident.* The best evidence of *his* [such] intention[*s*] is afforded by the conduct, acts and declarations of the alien. The typical transient is one who stops for a short time in the course of a journey through the United States, sometimes performing labor, sometimes not, or one who enters the

United States intending only to stop long enough to carry out some purpose, object or plan not involving an extended stay. A mere floating intention, indefinite as to time, to return to another country is not sufficient to constitute him a transient.

2974 **Art. 313 [Art. 312]. Proof of Residence of Alien.**—An alien's statements as to his intention with regard to residence are not conclusive but when unequivocal will determine the question of his intention, unless his conduct, acts, or other surrounding circumstances contradict the statements. It sometimes occurs that an alien who genuinely intends his stay to be transient may put off his departure from time to time by reason of changed conditions, remaining a transient though living in the United States for a considerable time. The fact that an alien's family is abroad does not necessarily indicate that he is a transient rather than a resident. An alien who enters this country intending to make his home in a foreign country as soon as he has accumulated a sum of money sufficient to provide for his journey abroad is to be considered a transient, provided his expectation in this regard may reasonably, considering the rate of his saving, be fulfilled within a comparatively short time.

2975 **Art. 314 [Art. 313]. Loss of Residence by Alien.**—It will be presumed that an alien who has established a residence in the United States, as outlined above, continues to be a resident until he or his family evidence an intention to change their residence to another country by starting to remove. Thus, alien residents who, following the armistice agreement of November, 1918, take steps toward returning to their native countries, as by applying for passports, *may for the purpose of withholding* [are to] be regarded as residents for that portion of the taxable year which elapsed up to the time such step was taken. *But the status of the alien on the last day of his taxable year or period determines his liability to tax for such year or period as a resident or nonresident. See articles* 305 *and* 306.

2976 **Art. 315. [Art. 314]. Duty of Employer to Determine Status of Alien Employee.**—Aliens employed in the United States are prima facie regarded as nonresidents. If wages are paid without withholding the tax *except as permitted in the following article*, the employer should be provided with written proof of facts which overcome the presumption that such alien is a nonresident. Such facts include the following: (a) If an alien has been living in the United States for as much as one year immediately prior to the time he entered the employment of the withholding agent, or if he has been regularly employed by a resident individual or corporation in the same county for as much as three months immediately prior *to any payment by the employer* he may be treated as a resident in the absence of facts known to the employer showing that he is in fact a transient, such as one of the types mentioned under article 312. The facts with regard to the length of time the alien has thus lived in the country or county and has been so regularly employed may be established by the certificate of the alien. (b) The employer may also obtain evidence to overcome the prima facie presumption of nonresidence by securing from the alien form 1078 (revised) [properly executed,] or an equivalent certificate of the alien establishing residence. Having secured such evidence from the alien, the employer may rely thereon unless the statement of the alien was false and the employer has reasonable cause to believe it false, and may continue to rely thereon until the alien ceases to be a resident under the provisions of article 314. An employer who seeks to account for failure to withhold in the past, if he did not *at the*

time secure form 1078 (revised) or its equivalent [at the time], is permitted to prove the former status of the alien by any material evidence.

2976a [Art. 315. Allowance of Deductions and Credits to Nonresident Alien.—*See* ¶2973].

2977 Art. 316. Allowance of Personal Exemption to Nonresident Alien
541 Employee.—*A nonresident alien employee, provided he is entitled under*
3275 *section* 216 *of the statute and articles* 301–307 *to credit for a personal exemption or for dependents or both, may claim the benefit of such credit by filing with his employer form* 1115, *duly filled out and executed under oath. See particularly the lists of foreign countries in article* 307. *On the filing of such a claim the employer shall examine it. If on such examination it appears that the claim is in due form, that it contains no statement which to the knowledge of the employer is untrue, that such employee on the face of the claim is entitled to credit, and that such credit has not yet been exhausted, such employer need not until such credit be in fact exhausted withhold any tax from payments of salary or wages made to such employee. Every employer with whom affidavits of claim on form* 1115 *are filed by employees shall preserve such affidavits until the following calendar year, and shall then file them, attached to his annual withholding return on form* 1042 (*revised*), *with the collector on or before March* 1. *In case, however, when the following calendar year arrives such employer has no withholding to return, he shall forward all such affidavits of claim directly to the Commissioner* (*Sorting Division*), *with a letter of transmittal, on or before March* 15. *Where any tax is withheld the employer in every instance shall show on the pay envelope or shall furnish some other memorandum showing the name of the employee, the date and the amount withheld. This article applies only to payments of compensation by an employer to an employee. See further section* 221 *and articles* 361-376.

PARTNERSHIPS AND PERSONAL SERVICE CORPORATIONS.

2977a NOTE.—The revised regulations bearing on partnerships and personal service corporations (¶2978 to ¶2990) are much the same as the corresponding regulations in the preliminary edition except as to arrangement, in which regard, however, the changes are so extensive that to have indicated these by the use of brackets and italics, as elsewhere in the revision, would have proved annoying rather than helpful. Hence the use of regular Roman type in ¶2978 to ¶2990.

2978 Art. 321. Partnerships.—[See note at ¶2977a.] Partnerships as
168 such are not subject to taxation under the statute, but are required
169 to make returns of income. See section 224 of the statute and articles 411 and 412. Individuals carrying on business in partnership are, however, taxable upon their distributive shares of the net income of such partnerships, whether distributed or not, and are required to include such distributive shares in their returns. The net income of a partnership shall be computed in the same manner and on the same basis as the net income of an individual, except that the deduction of contributions or gifts is not permitted. See section 212 and articles 21–26. As to the excess profits tax on partnerships with fiscal years ending in 1918 see section 335 (c).

2978a Art. 322. Distributive Shares of Partners.—[See note at ¶2977a.] The distributive share of the net income of a partnership which a partner is required to include in his return is his proportionate share of the

net income of the partnership, either (*a*) for the taxable year upon the basis of which the partner's net income is computed, or (*b*) if the partner's net income is computed upon the basis of a taxable year different from that upon the basis of which the net income of the partnership is computed, for the taxable year of the partnership ending within the taxable year upon the basis of which the partner's net income is computed. Amounts earned and distributed to a partner by a partnership after the end of its taxable year and before the end of his corresponding taxable year should be accounted for both by the partnership and by the partner in their returns for their next succeeding taxable years.

2978b Art. 323. **Credits Allowed Partners.**—[See note at ¶2977a.] In addition to the credits ordinarily allowed to an individual, a partner is entitled to the following credits: (*a*) a credit against net income for the purpose of the normal tax only of his proportionate share of such dividends from corporations subject to tax and of such interest not entirely exempt from tax upon obligations of the United States and bonds of the War Finance Corporation as are received by the partnership; and (*b*) a credit against income tax of the partner's proportionate share of any income, war profits and excess profits taxes of the partnership paid or accrued during the taxable year to a foreign country upon income derived from sources therein, or to any possession of the United States, subject to the limitations of section 222 of the statute. See section 216 and articles 301 and 381–384.

2979 Art. 324. **Taxation of Partners in Partnership with Fiscal Year**
68 **Ending in 1918.**—[See note at ¶2977a.] If the fiscal year of a part-
72 nership began in the calendar year 1917 and ended in the calendar
1674 year 1918, the rates of tax for the calendar year 1917 apply to the
1678 amount of each partner's distributive share of the net income of the partnership for such fiscal year attributable to the calendar year 1917, and the rates for the calendar year 1918 to the amount of each partner's distributive share of such net income of the partnership attributable to the calendar year 1918. (*a*) The amount of each partner's distributive share of the net income of the partnership for such fiscal year attributable to the calendar year 1917 is found by determining the net income of the partnership for its entire fiscal year in accordance with the law applicable to the calendar year 1917 (see Title I of the Revenue Act of 1916 and Titles I and XII of the Revenue Act of 1917) and the distributive share thereof of each partner, and then taking such proportion of that distributive share as the part of the fiscal year falling within the calendar year 1917 bears to the full fiscal year. (*b*) The amount of each partner's distributive share of the net income of the partnership for such fiscal year attributable to the calendar year 1918 is found by determining the net income of the partnership for its entire fiscal year in accordance with the law applicable to the calendar year 1918 and the distributive share thereof of each partner, and then taking such proportion of that distributive share as the part of the fiscal year falling within the calendar year 1918 bears to the full fiscal year. See section 205 (c) of the statute and article 1621.

2980 Art. 325. **Application of Different Tax Rates in the Case of Fiscal**
72 **Year of Partnership Ending in 1918.**—[See note at ¶2977a.] Any
1678 deductions, exemptions or credits to which the partner in a partnership with a fiscal year ending in 1918 is entitled shall first be applied against his income subject to the rates for the calendar year 1918, unless of a kind plainly and properly chargeable against income taxable at the rates for

the calendar year 1917. The proportionate share of a partner of any excess profits tax imposed upon the partnership under the Revenue Act of 1917 with respect to that part of the fiscal year falling within the calendar year 1917 is plainly and properly chargeable against income taxable at the rate for that year and shall be credited against such income of the partner. In determining the rates of tax applicable to the amounts of the distributive shares of the partners attributable to the calendar years 1917 and 1918, respectively, the amounts subject to the rates for the calendar year 1918 shall be placed in the lower brackets of the rate schedule provided in the present statute and the amounts attributable to the calendar year 1917 in the next higher brackets of the rate schedule applicable to that year. See section 206 of the statute and article 1641, and also section 1 of Title I of the Revenue Act of 1916 and sections 1 and 2 of Title I of the Revenue Act of 1917.

2981 **Art. 326. Taxation of Partners in Partnership with Fiscal Year**
68 **Ending in 1919.**—[See note at ¶2977a.] If the fiscal year of a part-
72 nership began in the calendar year 1918 and ends in the calendar
1674 year 1919, the rates of tax for the calendar year 1918 apply to the
1678 amount of each partner's distributive share of the net income of the partnership for such fiscal year attributable to the calendar year 1918, and the rates for the calendar year 1919 to the amount of each partner's distributive share of such net income of the partnership attributable to the calendar year 1919. (*a*) The amount of each partner's distributive share of the net income of the partnership for such fiscal year attributable to the calendar year 1918 is found by determining the net income of the partnership for its entire fiscal year in accordance with the law applicable to the calendar year 1918 and the distributive share thereof of each partner, and then taking such proportion of that distributive share as the part of the fiscal year falling within the calendar year 1918 bears to the full fiscal year. (*b*) The amount of each partner's distributive share of the net income of the partnership for such fiscal year attributable to the calendar year 1919 is found by determining the net income of the partnership for its entire fiscal year in accordance with the law applicable to the calendar year 1919 and the distributive share thereof of each partner, and then taking such proportion of that distributive share as the part of the fiscal year falling within the calendar year 1919 bears to the full fiscal year. See section 205 (c) of the statute and article 1621.

2982 **Art. 327. Application of Different Tax Rates in the Case of Fiscal**
72 **Year of Partnership Ending in 1919.**—[See note at ¶2977a.] Any
1678 deductions, exemptions or credits to which the partner in a partnership with a fiscal year ending in 1919 is entitled shall first be applied against his income subject to the rates for the calendar year 1919, unless of a kind plainly and properly chargeable against income taxable at the rates for the calendar year 1918. In determining the rates of tax applicable to the amounts of the distributive shares of the partners attributable to the calendar years 1918 and 1919, respectively, the amounts subject to the rates for the calendar year 1919 shall be placed in the lower brackets of the rate schedule provided in the statute, and the amounts attributable to the calendar year 1918 in the next higher brackets of the rate schedule applicable to that year. See section 206 of the statute and article 1641.

2983 **Art. 328. Personal Service Corporations.**—[See note at ¶2977a.]
177 Personal service corporations are defined in section 200 of the statute.
1305 See articles 1523–1532. Such corporations are not subject to tax as corporations, unless they make returns for fiscal years beginning in

1917, but they are required to make returns of income. See sections 231, 239 and 304 of the statute and the articles thereunder. An individual stockholder of a personal service corporation is, however, subject to tax much like a member of a partnership upon his distributive share of the net income of the corporation. The net income of a personal service corporation, as in the case of a partnership, shall be computed in the same manner and on the same basis as the net income of an individual, except that the deduction of contributions or gifts is not permitted. See section 212 and articles 21–26. A corporation which is taxable under section 303 is not a personal service corporation and its stockholders are taxed like stockholders in an ordinary corporation.

2984 **Art. 329. Personal Service Corporation with Fiscal Year Ending in**
60 **1918.**—[See note at ¶2977a.] If the fiscal year of a personal service
1666 corporation began in the calendar year 1917 and ended in the calendar year 1918, it is subject to tax as a corporation for the part of such fiscal year which falls within the calendar year 1917. The amount for which such a corporation is liable is such proportion of the tax for the entire fiscal year computed in accordance with Title I of the Revenue Act of 1916 as amended and with Title I of the Revenue Act of 1917 as the portion of such fiscal year falling within the calendar year 1917 is of the entire period. An amount previously paid by the corporation on account of the income tax for such fiscal year shall be credited toward the payment of the tax for the portion of the fiscal year falling within the calendar year 1917, and any excess shall be credited or refunded in accordance with the provisions of section 252 of the statute. See section 205 (a) and article 1621. As to the excess profits tax see section 335 (c).

2985 **Art. 330. Distributive Shares of Stockholders in Personal Service**
179 **Corporation.**—[See note at ¶2977a.] A stockholder of a personal
1307 service corporation is required to include in his gross income for the taxable year (*a*) any dividends paid by the corporation in such year out of earnings or profits accumulated since February 28, 1913, and before January 1, 1918; (*b*) his share of any distribution made by the corporation in such year out of earnings or profits accumulated since December 31, 1917, and since the close of its taxable year ending with or during his next preceding taxable year; and (*c*) his distributive share of the undistributed net income of the corporation for its taxable year ending with or during his taxable year provided he was at the close of its taxable year a stockholder in the corporation, notwithstanding he might since have ceased to be a stockholder. See section 201 of the statute and articles 1541–1543. In the case of personal service corporations with taxable years other than the calendar year, however, such distributive shares or distributions may be subject to different rates of tax.

2986 **Art. 331. Credits Allowed Stockholders of Personal Service Cor-**
poration.—[See note at ¶2977a.] A stockholder of a personal service corporation is entitled to credit for the purpose of the normal tax only for amounts received in distribution of earnings or profits of the corporation accumulated since February 28, 1913, and prior to January 1, 1918. See sections 201 and 216 of the statute and articles 1541 and 301. In addition to the credits ordinarily allowed to an individual a stockholder of a personal service corporation is entitled to the following credits: (*a*) a credit against net income for the purpose of the normal tax only of his proportionate share of such dividends from a corporation subject to tax and of such interest

not entirely exempt from tax upon obligations of the United States and bonds of the War Finance Corporation as are received by the personal service corporation, and (*b*) a credit against income tax of the stockholder's proportionate share of income, war profits and excess profits taxes of the personal service corporation paid or accrued during the taxable year to a foreign country upon income derived from sources therein, or to any possession of the United States, subject to the limitations of section 222 of the statute. See articles 381–384.

2987 **Art. 332. Taxation of Stockholders of Personal Service Corporation**
68 **with Fiscal Year Ending in 1918.** [See note at ¶2977a.] A stock-
72 holder of a personal service corporation with a fiscal year beginning
1674 in 1917 and ending in 1918 is taxed at the rates for the calendar year
1678 1918 (*a*) on any dividends received in such calendar year out of earnings or profits accumulated since February 28, 1913, and before January 1, 1918 (except as provided under (*d*) below); (*b*) on any distribution made in such calendar year out of earnings or profits accumulated since December 31, 1917; and (*c*) on his distributive share of the undistributed net income of the corporation for its fiscal year attributable to the calendar year 1918. (*d*) On his distributive share of the undistributed net income of the corporation for its fiscal year attributable to the calendar year 1917, however, the stockholder is liable to surtax at the rates for the calendar year 1917, but to no normal tax, and any distribution by the corporation subsequently to the close of its fiscal year out of such undistributed net income so taxed to the stockholders is free from any tax. The part of the net income of a corporation for its fiscal year attributable to the calendar year 1918 is found by determining the net income of the corporation for its fiscal year in the same manner as if the fiscal year were the calendar year 1918, and then taking the proportion thereof which the part of such fiscal year falling within such calendar year bears to the full fiscal year. The part of the net income of a corporation for its fiscal year attributable to the calendar year 1917 is found by determining the net income of the corporation for its fiscal year in accordance with the law applicable to the calendar year 1917, and then taking the proportion thereof which the part of such fiscal year falling within the calendar year 1917 bears to the full fiscal year. See section 205 (c) of the statute and article 1621.

2988 **Art. 333. Application of Different Tax Rates in the Case of Fiscal**
72 **Year of Personal Service Corporation Ending in 1918.** [See note at
1678 ¶2977a.] Any deductions, exemptions or credits to which the stockholder of a personal service corporation with a fiscal year ending in 1918 is entitled shall first be applied against his income subject to the rates for the calendar year 1918, unless of a kind plainly and properly chargeable against income taxable at the rates for the calendar year 1917. The proportionate share of a stockholder of any excess profits tax imposed upon the corporation under the Revenue Act of 1917 with respect to that part of the fiscal year falling within the calendar year 1917 is plainly and properly chargeable against income taxable at the rates for that year and shall be credited against such income of the stockholder. In determining the rates of tax applicable to the amounts of the distributive shares of the stockholders attributable to the calendar years 1917 and 1918, respectively, the amounts subject to the rates for the calendar year 1918 shall be placed in the lower brackets of the rate schedule provided in the present statute and the amounts attributable to the calendar year 1917 in the next higher brackets of the rate schedule applicable to that year. See section 206 of the statute and

article 1641, and also section 1 of Title I of the Revenue Act of 1916 and sections 1 and 2 of Title I of the Revenue Act of 1917.

2989 Art. 334. **Taxation of Stockholders of Personal Service Corporation**
68 **with Fiscal Year Ending in 1919.** [See note at ¶2977a.] Such part
72 of a stockholder's distributive share of the net income of a personal
1674 service corporation for its fiscal year ending in 1919 as is attributable
1678 to the calendar year 1919 is taxable at the rates for such calendar year, and such part of such distributive share as is attributable to the calendar year 1918 is taxable at the rates for such calendar year. The part of a stockholder's distributive share of the net income of a corporation for its fiscal year attributable to the calendar year 1919 is found by determining his distributive share of the net income of the corporation for its fiscal year, whether distributed or not, in the same manner as if the fiscal year were the calendar year 1919, and then taking the proportion thereof which the part of such fiscal year falling within such calendar year bears to the full fiscal year. The part of a stockholder's distributive share of the net income of a corporation for its fiscal year attributable to the calendar year 1918 is found by determining his distributive share of the net income of the corporation for its fiscal year, whether distributed or not, in the same manner as if the fiscal year were the calendar year 1918, and then taking the proportion thereof which the part of such fiscal year falling within such calendar year bears to the full fiscal year. The stockholder is also liable to tax on dividends received out of earnings or profits accumulated since February 28, 1913, and before January 1, 1918. See sections 201 and 205 (c) of the statute and articles 1541–1543 and 1621.

2990 Art. 335. **Application of Different Tax Rates in the Case of Fiscal**
72 **Year of Personal Service Corporation Ending in 1919.**—[See note at
1678 ¶2977a.] Any deductions, exemptions or credits to which the stockholder of a personal service corporation with a fiscal year ending in 1919 is entitled shall first be applied against his income subject to the rates for the calendar year 1919, unless of a kind plainly and properly chargeable against income taxable at the rates for the calendar year 1918. In determining the rates of tax applicable to the amounts of the distributive shares of the stockholders attributable to the calendar years 1918 and 1919, respectively, the amounts subject to the rates for the calendar year 1919 shall be placed in the lower brackets of the rate schedule provided in the statute and the amounts attributable to the calendar year 1918 in the next higher brackets of the rate schedule applicable to that year. See section 206 of the statute and article 1641.

ESTATES AND TRUSTS

2991 Art. 341. **Estates and Trusts.**—*While certain estates and trusts are*
180 *subject to tax as such and others are not, the fiduciary in every case is*
1217 *required to make a return of income. See section* 225 *of the statute and articles* 421–425. *The net income of an estate or trust shall be computed in the same manner and on the same basis as the net income of an individual, except that in place of the deduction allowed individuals of certain gifts or contributions there may be deducted from the gross income any part of it which during the taxable year is pursuant to the will or trust deed paid to or permanently set aside for the United States, a State, a Territory, or any political subdivision thereof, the District of Columbia, or any corporation or association of the kind described in section* 231 (6) *of the statute and article* 517. *See section*

212 *and articles* 21–26. *The income of a revocable trust must be included in the gross income of the grantor.*

2991a Art. 342 [Art. 341]. Estates and Trusts Taxed to Fiduciary.—In the case of (*a*) estates of decedents before final settlement and of (*b*) trusts, whether created by will or deed, *for accumulation of income*, *whether* for unascertained persons or persons with contingent interests or otherwise [for accumulation] of income, the income is taxed to the fiduciary as to any single individual, except that from the income of a decedent's estate there may first be deducted any amount *of income* properly paid or credited to a beneficiary. See section 200 of the statute and articles 1521 and 1522. *Where under the terms of the will or deed the trustee may in his discretion distribute the income or accumulate it, the income is taxed to the trustee, irrespective of the exercise of his discretion. The imposition of the tax is not affected by the fact that an ultimate beneficiary may be a person exempt from tax. A statutory allowance paid a widow out of the corpus of the estate is not deductible from gross income.* As an intestate's real estate does not pass to his administrator, upon a sale by the heirs, whether before or after settlement of the estate, each heir is taxed individually on any profit derived.

2992 Art. 343 [Art. 342]. Decedent's Estate During Administration.—The "period of administration or settlement of the estate" is the period required by the executor or administrator to perform the ordinary duties pertaining to administration, in particular the collection of assets and the payment of debts and legacies. It is the time actually required for this purpose, whether longer or shorter than the period specified in the local statute for the settlement of estates. Where an executor, who is also named as trustee, fails to obtain his discharge as executor, the period of administration continues up to the time when the duties of administration are complete and he actually assumes his duties as trustee, whether pursuant to an order of the court or not. No taxable income is realized from the passage of property to the executor or administrator on the death of the decedent, even though it may have appreciated in value since the decedent acquired it. In the event of delivery of property in kind to a legatee or distributee, no income is realized. Where, however, the executor sells property of the estate for more than its value at the death of the decedent, the excess is income taxable to the estate. *See article* 1562.

2993 Art. 344 [Art. 343]. Incidence of Tax on Estate or Trust.—Liability for payment of the tax attaches to the person of an executor or administrator up to and after his discharge, where prior to distribution and discharge he had notice of his tax obligations or failed to exercise due diligence in determining whether or not such obligations existed. Liability for the tax also follows the estate itself, and when by reason of the distribution of the estate and discharge of the executor or administrator it appears that collection of the tax can not be made from the executor or administrator, the legatees or distributees must account for their proportionate share of the tax due and unpaid. The same considerations apply to other trusts. Where the tax has been paid on the net income of an estate or trust by the fiduciary, such income is free from tax when distributed to the beneficiaries.

2994 Art. 345 [Art. 344]. Estates and Trusts Taxed to Beneficiaries.—In the case of (*a*) a trust the income of which is distributable periodically, (*b*) an ordinary guardianship of a minor, and (*c*) an estate of a decedent before final settlement as to any income properly paid or credited as such

to a beneficiary, the income is taxable directly to the beneficiary or beneficiaries. Each beneficiary must include in his return his distributive share of the net income, even though not yet paid him, but if the taxable year on the basis of which he makes his returns fails to coincide with the *annual* accounting period of the estate or trust, then he need only include in his return his distributive share for [any] such accounting period ending within his taxable year. *The regulations governing partnerships are generally applicable to such an estate or trust. See articles* 321–327. [For the purpose of the normal tax a beneficiary is allowed as a credit against net income his proportionate share of the amount received by the estate or trust as dividends out of taxed or taxable income of a corporation, or as interest not entirely exempt from tax upon obligations of the United States or bonds issued by the War Finance Corporation. See section 216 of the statute and article 301. *For matter cut out here see next paragraph.*]

2994a Art. 346. Credits to Trust or Beneficiary.—(*a*) *In the case of an estate or trust taxed to the fiduciary it is allowed the same credits against net income as a single person, including a personal exemption of* $1,000, *but no credit for dependents.* (*b*) *In the case of an estate or trust taxed to the beneficiaries each beneficiary is allowed for the purpose of the normal tax, in addition to his individual credits, his proportionate share of such dividends from domestic and resident foreign corporations and of such interest not entirely exempt from tax upon obligations of the United States and bonds of the War Finance Corporation as are received by the estate or trust. Each beneficiary is entitled to but one personal exemption, no matter from how many trusts he may receive income. See section* 216 *of the statute and articles* 301–307.

PROFITS OF CORPORATIONS TAXABLE TO STOCKHOLDERS.

2995 Art. 351. Profits of Corporations Taxable to Stockholders.—
197 Where a domestic or foreign corporation permits its gains and
746 profits to accumulate for the purpose of preventing the imposition of the surtax upon such income if distributed to its stockholders, it shall not be subject to the income tax as a corporation, but its stockholders shall be subject to tax in the same way as the stockholders of a personal service corporation, except that the war profits and excess profits tax on the corporation shall first be deducted from its net income before computing the proportionate shares of the stockholders. See section 218 of the statute and articles 328–335. In any case the Commissioner or a collector may require a corporation to furnish a statement of its gains and profits and of the names, addresses, and shareholdings of the stockholders If upon the basis of such statement or other evidence the Commissioner certifies that in his opinion its accumulation of profits is unreasonable for the purposes of the business, *but only if he so certifies*, the corporation and its stockholders shall make their returns accordingly.

2995a Art. 352. Purpose to Escape Surtax.—*The application of section* 220 *of the statute depends upon the two elements of* (*a*) *purpose to escape the surtax and* (*b*) *unreasonable accumulation of gains and profits. Prima facie evidence of* (*a*) *exists where a corporation has practically no business except holding stocks, securities or other property and collecting the income therefrom, or where a corporation other than a mere holding company permits its gains and profits to accumulate beyond the reasonable needs of the business. The business of a corporation is not limited to that which it has previously carried on, but in general includes any line of business which it may legitimately undertake. However, a radical change of business when a considerable surplus has been*

accumulated may afford evidence of a purpose to escape the surtax. When one corporation owns the stock of another corporation in the same or a related line of business and in effect operates the other corporation, the business of the latter may be considered in substance the business of the first corporation. Gains and profits of the first corporation put into the second through the purchase of stock or otherwise may therefore, if a subsidiary relationship is established, constitute employment of the income in its own business. To establish that the business of one corporation can be regarded as including the business of another it is ordinarily essential that the first corporation own substantially all of the stock of the second. Investment by a corporation of its income in stock and securities of another corporation is not without more to be regarded as employment of the income in its business.

2995b Art. 353. Unreasonable Accumulation of Profits.—*An accumulation of gains and profits is unreasonable if it is not required for the purposes of the business, considering all the circumstances of the case. No attempt can be made to enumerate all the ways in which gains and profits of a corporation may be accumulated for the reasonable needs of the business. Undistributed income is properly accumulated if invested in increased inventories or additions to plant reasonably needed by the business. It is properly accumulated if retained for working capital required by the business or in accordance with contract obligations placed to the credit of a sinking fund for the purpose of retiring bonds issued by the corporation. In the case of a banking institution the business of which is to receive and loan money, using capital, surplus and deposits for that purpose, undistributed income actually represented by loans or reasonably retained for future loans is not accumulated beyond the reasonable needs of the business. The nature of the investment of gains and profits is immaterial if they are not in fact needed in the business.*

PAYMENT OF TAX AT SOURCE.

2996 **Art. 361. Withholding Tax At Source.**—In general withholding
201 is required (a) of a tax of 8 per cent in the case of fixed or deter-
332 minable annual or periodical income (other than dividends from
553 corporations liable to the income tax and interest upon corporate
572 bonds containing a tax-free covenant clause) payable to a non-resident alien individual; (b) of a tax of 10 per cent in the case of fixed or determinable annual or periodical income (other than dividends from corporations liable to the income tax and interest upon corporate bonds containing a tax-free covenant clause) payable to a foreign corporation not engaged in trade or business within the United States and not having any office or place of business therein; and (c) of a tax of 2 per cent in the case of interest payable to an individual or a partnership, whether resident or nonresident, or to a foreign corporation not engaged in trade or business within the United States and not having any office or place of business therein, upon bonds or other obligations of domestic or resident *foreign* corporations containing a so-called tax-free covenant clause. Withholding in all cases at the highest applicable rate is also required from interest on bonds or other securities where the owner of such securities is unknown to the withholding agent. Bonds issued under a trust deed containing a tax-free covenant are treated as if they contained such a covenant. A foreign corporation having a fiscal agency in this country is required to withhold a tax of 2 per cent upon the interest on its tax-free covenant bonds. See further section 200, 217, 237 *and* 256 of the statute *and articles* 1533, 311-316, 601, 1071-1080.

2996a **Art. 362. Fixed or Determinable Annual or Periodical Income.**—Only *(a) fixed or determinable (b) annual or periodical income is subject to withholding. Among such income, giving an idea of the general character of income intended, the statute specifies interest, rent, salaries, wages, premiums, annuities, compensations, remunerations and emoluments. But other kinds of income may be included. (a) Income is fixed when it is to be paid in amounts definitely predetermined. On the other hand, it is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained. (b) The income need not be paid annually if it is paid periodically, that is to say, from time to time, whether or not at regular intervals. That the length of time during which the payments are to be made may be increased or diminished in accordance with someone's will or with the happening of an event does not make the payments any the less determinable or periodical. A salesman working by the month for a commission on sales which is paid or credited monthly receives determinable periodical income.*

2997 **Art. 363 [Art. 362]. Exemption from Withholding.**—Withholding from interest on bonds or other obligations containing a tax-free covenant shall not be required in the case of a citizen or resident alien individual if he files with the withholding agent when presenting interest coupons for payment, or not later than February first following the taxable year, an ownership certificate on form 1001 (revised) claiming a personal exemption or credit for dependents. See section 216 of the statute and articles 301–305. To avoid inconvenience a resident alien individual should file a certificate of residence on form 1078 (revised) with withholding agents, who shall forward such certificates to the Commissioner (Sorting Division) with a letter of transmittal. *See Article* 315. [Notwithstanding the provisions of section 217 of the statute,] Withholding is required from income of a nonresident individual, *except as provided in article* 316. No withholding from corporate dividends (*other than distributions by a personal service corporation*) is required in any case. The income of domestic and resident foreign corporations is free from withholding.

2998 **Art. 364 [Art. 363]. Ownership Certificates for Interest Coupons.**—The owners of bonds or other obligations, whether or not containing a tax-free covenant, issued by domestic or resident *foreign* corporations, when presenting interest coupons for payment shall file a certificate of ownership for each issue of bonds, showing the name and address of the debtor corporation, the name and address of the owner of the bonds, whether the payee is married or the head of a family [or has other dependents], the nature of the obligations, the amount of interest and its due date, and the amount of any tax withheld. No ownership certificate need be filed in the case of interest payments on bonds the income from which is not included in gross income, nor in the case of any obligations of the United States. See section 213 (*b*) of the statute and articles 74–82. Where in connection with the sale of its property payment of the bonds or other obligations of a corporation is assumed by the assignee, such assignee, whether an individual, partnership, corporation, or a State or political subdivision thereof, must deduct and withhold such taxes as would have been required to be withheld by the assignor had no such sale and transfer been made.

2999 **Art. 365 [Art. 364]. Form of Certificate Where Withholding Required.**—Form 1000 (revised) shall be used (a) by citizens or residents of the United States when no personal exemption or credit is claimed against interest on bonds containing a tax-free covenant; (b) by nonresident alien

individuals and foreign corporations not engaged in trade or business within the United States and not having any office or place of business therein, whether or not such bonds contain a tax-free covenant; (c) by partnerships, resident or nonresident, in the case of bonds containing a tax-free covenant. [and (d) where coupons are received not accompanied by certificates of ownership. The first bank receiving coupons not accompanied by ownership certificates will make a certificate, crossing out "owner" and inserting "payee," and will enter the amount of interest in the space provided for unknown ownership. *For matter cut out here see Art. 368, ¶3001a.*]

3000 Art. 366 [Art. 365]. Form of Certificate Where No Withholding Required.—Form 1001 (revised) shall be used (a) by citizens or residents of the United States when personal exemption is claimed against interest on bonds containing a tax-free covenant and when presenting coupons from bonds not containing a tax-free covenant; (b) by domestic corporations; (c) by partnerships, resident or nonresident, in the case of bonds not containing a tax-free covenant; and (d) by foreign corporations engaged in trade or business within the United States or having an office or place of business therein, whether or not such bonds contain a tax-free covenant. In case a citizen or resident alien individual receives interest on bonds containing a tax-free covenant in excess of the amount of personal exemption which the individual may claim, any such excess must be reported on form 1000 (revised).

3001 Art. 367 [Art. 366]. Use of Substitute Certificates.—Resident collecting agents *and* responsible banks and bankers, receiving interest coupons for collection with ownership certificates attached, may present the coupons with the original certificates to the debtor corporation or its duly authorized withholding agent for collection or may detach and forward the original certificates directly to the Commissioner, provided each such collecting agent shall substitute for such original certificates its own certificates (form 1058 (revised) or form 1059 (revised)) and shall keep a complete record of each transaction, showing (a) serial number of item received; (b) date received; (c) name and address of person from whom received; (d) name of debtor corporation; (e) class of bonds from which coupons were cut (whether containing a tax-free covenant or not); and (f) face amount of coupons. For the purpose of identification the substitute certificates shall be numbered consecutively and corresponding numbers given the original certificates of ownership. The use of substitute certificates by collecting agents, banks and bankers is not permitted, however, in the case of ownership certificates presented with coupons for collection by nonresident alien individuals, partnerships, or corporations.

3001a Art. 368. Interest Coupons Without Ownership Certificates.—
651 *Where interest coupons are received unaccompanied by certificates of ownership the first bank shall require of the payee an affidavit showing the name and address of the payee, the name and address of the debtor corporation. the date of the maturity of the interest, the name and address of the person from whom the coupons were received, the amount of the interest, and a statement that the owner of the bonds is unknown to the payee. Such affidavit shall be forwarded to the collector with the monthly return on form* 1012 (*revised*). *The first bank receiving such coupons shall also prepare a certificate on form* 1000 (*revised*) *crossing out "owner" and inserting "payee" and entering the amount of interest in the space provided for a foreign corporation having no office or place of business*

within the United States, and shall stamp or write across the face of the certificate "Affidavit furnished," adding the name of the bank.

3001b Art. 369. Interest on Registered Bonds.—*Where a bondholder files*
645 *no ownership certificate in the case of payments of interest on registered bonds the withholding agent shall make out such a certificate in each instance (a) on form* 1000 *(revised) if the bondholder is a citizen or resident of the United States or a resident or nonresident partnership and the bonds contain a tax-free covenant, or if the bondholder is a nonresident alien individual or a foreign corporation not engaged in trade or business within the United States and not having any office or place of business therein, and (b) on form* 1001 *(revised) in all other cases. When so used forms* 1000 *(revised), and* 1001 *(revised) need not be signed.*

3002 Art. 370 [Art. 367]. Return of Tax Withheld.—(a) Every withholding agent shall make an annual return to the collector of the tax withheld from interest on corporate bonds or other obligations on or before March 1 on form 1013 (revised). He shall also make a monthly return on form 1012 (revised) on or before the 20th day of the month following that for which the return is made. The original ownership certificates, or the substitute certificates where authorized, must be forwarded to the collector with the monthly return. (b) Every person required to deduct and withhold any tax from income other than such bond interest shall make an annual return thereof to the collector on or before March 1 on form 1042 (revised), accompanied by a separate report on form 1098 (revised) for each nonresident alien individual or foreign corporation not engaged in trade or business within the United States and not having any office or place of business therein, to whom income other than bond interest was paid during the previous taxable year. In every case of both classes the tax withheld must be paid on or before June 15 of each year to the collector. For penalties attaching upon failure to make such returns or such payment, see section 253 of the statute and article 1041.

3003 Art. 371 [Art. 368]. Withholding in 1918.—In *the* case[*s*] *of payments made* prior to *February* 25, 1919, [the date of the passage of the Revenue Act of 1918,] where a withholding agent pursuant to the Revenue Acts of 1916 and 1917 withheld only 2 per cent from the income of nonresident alien individuals, he need return only such sum. In all such cases where a withholding agent withheld the tax pursuant to the Revenue Acts of 1916 and 1917 from the income of foreign corporations not engaged in trade or business within the United States and not having any office or place of business therein he need return only the sum withheld, to an amount not in excess of the aggregate sum required to be withheld by the terms of the Revenue Act of 1918 from the income paid over by the withholding agent. *In the case of every payment made after February* 24, 1919, *the withholding agent must withhold at the rates prescribed by the present statute from the whole payment, not merely from that part which applies to the period after February* 24, 1919.

3004 Art. 372 [Art. 369]. Release of Excess Tax Withheld.—Any sum withheld for tax since December 31, 1917, in excess of the *aggregate* amount *required under the terms of* [described by] the Revenue Act of 1918, shall be released by the withholding agent and paid over to the person from whom it was withheld or his proper representative. With reference to how a debtor corporation may release and pay over the amount of tax so withheld

in a case where a bank or other collection agency detached the ownership certificate which accompanied an interest coupon and substituted its own certificate (form 1059), which does not disclose the name and address of the bond owner, in such cases the withholding agent shall request the bank or collection agency to disclose the name and address of the owner of the bonds, as shown by the original certificate, and it shall be the duty of the bank or collection agency to make such disclosure to the withholding agent. Where withholding agents have so released any excess of tax, an itemized statement showing the names, addresses and amounts refunded should be attached to the annual list return (form 1013), in order to reconcile any discrepancy between the aggregate amount of taxes returned as shown by the monthly list returns (form 1012) and the aggregate amount as shown by the annual list return.

3005 **Art. 373 [Art. 370]. Use of Information Return Where No Actual Withholding.**—Where a debtor corporation or its duly authorized withholding agent has made *payments of interest on its bonds, but in certain instances has been required to withhold no tax, the ownership certificates on form* 1001 (*revised*) *filed in connection with such payments shall be transmitted directly to the Commissioner* (*Sorting Division*), *accompanied by a return on form* 1096 *A showing the number of ownership certificates thus transmitted and the total amount of interest paid. This return shall be made by the* 20*th day of each month following that for which the return is made and need not be sworn to. An annual return shall be forwarded to the Commissioner not later than March* 15 *of each year on form* 1096 *B, on which shall be given a summary of the monthly returns. To the extent that there has been actual withholding of the tax returns should be made in accordance with article* 370. [no payments of interest to nonresident alien individuals or foreign corporations not engaged in trade or business within the United States and not having any office or place of business therein, or to unknown persons, and has withheld no tax from interest payable to citizens or residents of the United States, individuals or partnerships, whether or not the bonds upon which such interest accrued contained a tax-free covenant clause, the ownership certificates filed in connection with such interest payments shall not be forwarded to collectors, accompanied by a return on form 1012 (revised), but shall be transmitted directly to the Commissioner (Sorting Division), accompanied by a letter of transmittal. This return shall be made monthly and need not be sworn to. The number of ownership certificates thus transmitted and the total amount of interest paid shall be entered in the return.]

3006 **Art. 374 [Art. 371]. Ownership Certificates in the Case of Fiduciaries and Joint Owners.**—When fiduciaries have the control and custody of more than one estate or trust, and such estates and trusts have as assets bonds of corporations and other securities, a certificate of ownership shall be executed for each estate or trust, regardless of the fact that the bonds are of the same issue. *When bonds are owned jointly by several persons, a separate ownership certificate must be executed in behalf of each of the owners.* [When bonds are owned jointly by several persons, one of the owners may execute an ownership certificate in behalf of the other owners and indorse on the back thereof their names and addresses and the proportionate ownership of each.]

3007 **Art. 375 [Art. 372]. Withholding in the Case of Enemies.**—Payments made after October 6, 1917, to the alien property custodian are in the same category as payments made to or for citizens or residents of the United

States. Withholding at the source is accordingly unnecessary except in the case of interest payments on corporate bonds or other obligations containing a tax-free covenant where no exemption is claimed. The alien property custodian should use form 1000 (revised) in collecting interest on bonds containing a tax-free covenant and in all other cases should use form 1001 (revised). No distinction is to be made between payments directly to the alien property custodian and to his depositaries and between interest on registered bonds and interest on coupon bonds. In the case of enemies or allies of enemies holding a license granted under the provisions of the Trading with the Enemy Act, withholding is required as in the case of any nonresident alien not an enemy or ally of enemy. See article 446.

3007a Art. 376. **Return of Income from which Tax Withheld.**—*The entire*
222 *amount of the income from which the tax was withheld shall be included*
730 *in gross income without deduction for such payment of the tax. But any tax actually so withheld shall be credited against the total tax as computed in the taxpayer's return. If the tax is paid by the recipient of the income or by the withholding agent it shall not be recollected from the other, regardless of the original liability therefor, and in such event no penalty will be asserted against either person where no fraud or purpose to evade payment is involved.*

CREDIT FOR TAXES

3008 Art. 381. **Analysis of Credit for Taxes.**—(1) In the case of a
226 citizen of the United States, whether resident or nonresident, the
1059 basis of the credit for taxes is as follows: (a) "The amount of any income, war-profits and excess-profits taxes paid," or accrued, "during the taxable year * * * to any possession of the United States"; (b) "the amount of any" such taxes paid or accrued, "during the taxable year to any foreign country, upon income derived from sources therein"; and (c) the "proportionate share of" any "such taxes of" a partnership of which he is a partner or of an estate or trust of which he is a beneficiary paid or accrued, "during the taxable year to a foreign country or to any possession of the United States, as the case may be."

(2) In the case of an alien resident of the United States the basis
3009 of the credit for taxes is as follows: (a) "The amount of any income,
229 war-profits and excess-profits taxes paid," or accrued, "during the
1062 taxable year * * * to any possession of the United States" (identical with (1) (a) above); (b) "the amount of any such taxes paid" or accrued "during the taxable year to" the country of which he is a citizen or subject, "upon income derived from sources therein, if such country, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country"; and (c) the "proportionate share of" any "such taxes of" a partnership of which he is a partner or of an estate or trust of which he is a beneficiary paid or accrued "during the taxable year to" the country of which he is a citizen or subject ("if such country, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country"), "or to any possession of the United States, as the case may be." *As to credits for taxes in the case of corporations see section* 238 *of the statute and article* 611.

3010 Art. 382. **Meaning of Terms.**—"Amount of * * * taxes paid during the taxable year" means taxes proper (no credit being given for amounts representing interest or penalties) paid or accrued during the taxable year on behalf of the individual claiming credit. "Foreign

country" *includes within its meaning any foreign sovereign state or self-governing colony (for example, the Dominion of Canada), but does not include a foreign municipality (for example, Montreal) unless itself a sovereign State (for example, Hamburg)* [means any governmental authority, not that of the United States or any part or possession thereof, having power to impose such taxes, and it therefore includes a self-governing colony, such as the Dominion of Canada]. "Any possession of the United States" includes, among others, Porto Rico, the Philippines and the Virgin Islands. *As to the meaning of "sources," see articles* 91–93. See also section 1 of the statute [and articles 91 and 311].

3011 **Art. 383. Conditions of Allowance of Credit.**—(a) When credit is sought for income, war profits or excess profits taxes paid other than to the United States, the income tax return of the individual must be accompanied by form 1116, carefully filled out with all the information there called for and with the calculations of credits there indicated, and duly signed and sworn to or affirmed. When credit is sought for taxes already paid the form must have attached to it the receipt for each such tax payment. When credit is sought for taxes accrued the form must have attached to it the return on which each such accrued tax was based. This receipt or return so attached must be either the original, a duplicate original, a duly certified or authenticated copy, or a sworn copy. In case only a sworn copy of a receipt or return is attached, there must be kept readily available for comparison on request the original, a duplicate original or a duly certified or authenticated copy. (b) In the case of a credit sought for a tax accrued but not paid, the Commissioner may require as a condition precedent to the allowance of credit a bond from the taxpayer in addition to form 1116. If such a bond is required, form 1117 shall be used for it. It shall be in such penal sum as the Commissioner may prescribe, and shall be conditioned for the payment by the taxpayer of any amount of tax found due upon any redetermination of tax made necessary by such credit proving incorrect, with such further conditions as the Commissioner may require. This bond shall be executed by the taxpayer, his agent or representative, as principal, and by sureties satisfactory to and approved by the Commissioner. *See also section* 1320 *of the statute.*

3012 **Art. 384. Redetermination of Tax When Credit Proves Incorrect.**—In case credit has been given for taxes accrued, or a proportionate share thereof, and the amount that is actually paid on account of such taxes, or a proportionate share thereof, is not the same as the amount of such credit, or in case any tax payment credited is refunded in whole or in part, the taxpayer shall immediately notify the Commissioner. The Commissioner will thereupon redetermine the amount of the income tax of such taxpayer for the year or years for which such incorrect credit was granted. The amount of tax, if any, due upon such redetermination shall be paid by the taxpayer upon notice and demand by the collector. The amount of tax, if any, shown by such redetermination to have been overpaid shall be credited against any income, war profits or excess profits taxes, or installment thereof, then due from such taxpayer under any other return, and any balance of such amount shall be immediately refunded to him. See section 252 of the statute and articles 1031-1038.

INDIVIDUAL RETURNS

3013 **Art. 401. Individual Returns.**—*Every individual whose net income*
233 *as defined in section* 212 *of the statute and articles* 21–26, *is* $1,000 *or*
1142 *over for the taxable year must make a return of income unless married and living with husband or wife as defined in article* 303. *The return*

shall be for his taxable year, whether calendar or fiscal. Whether or not an individual is the head of a family or has dependents is immaterial in determining his liability to render a return. If an individual is a married person living with husband or wife, no return need be made where their aggregate net income is less than $2,000; *but a separate return must be made by each of them, regardless of the amount of the individual income of each, where their aggregate net income is* $2,000 *or over, unless they join in a single return. The husband shall include in his return the income derived from services rendered by the wife or from the sale of products of her labor if she does not file a separate return or join with him in a return setting forth her income separately. For returns by partnerships see section* 224 *and articles* 411 *and* 412; *by fiduciaries see section* 225 *and articles* 421–425; *by personal service corporations see section* 239 *and article* 624; *and by other corporations see sections* 239 *and* 240 *and articles* 621–626 *and* 631–638. *See also section* 227 *and articles* 441–448. [Every individual having a net income for the taxable year of $1,000 or over must make a return, except only that if married and living with husband or wife as defined in article 303 he need not do so unless their aggregate income is $2,000 or over, and except that a husband and wife living together may make a single joint return. Unless the wife files a separate return of income or joins with her husband in a return which shall set forth her income separately, her husband should include in his return the income accruing to the wife from services rendered by her or the sale of products of her labor.]

3013a Art. 402.—formerly part of Art. 401. **Form of Return.**—The return shall be on form 1040 (revised), except that it may be on short form 1040 A (revised) where the net income does not exceed $5,000 and the net income subject to the normal tax, that is, after applying the personal exemption and other credits, does not exceed $4,000. The forms are provided by the Commissioner and may be had from the collectors of the several districts. In the case of a person owning State, municipal, United States, *farm loan or War Finance Corporation* bonds, his return shall contain a statement showing the number and amount of such obligations owned by him, the income received therefrom, and the other information called for in the form. See section 213 (b) (4) of the statute. The return may be made by an agent when by reason of illness, absence or nonresidence the person liable for the return is unable to make it, the agent assuming the responsibility for making the return and incurring liability to the specific penalties provided for erroneous, false or fraudulent returns. *See section* 253 *and article* 1041.

3014 Art. 403 [Art. 402]. Return of Income of Minor.—An individual under 21 years of age or under the statutory age of majority where he lives, whatever it may be, is required to render a return of income if he has a net income of his own of $1,000 or over for the taxable year. *If he is married see article* 401. If the aggregate of the net income of a minor from any property which he possesses, and from any funds held in trust for him by a trustee or guardian, and from any earnings for his own use, is at least $1,000, a return as in the case of any other individual must be made by him or by his guardian or some other person charged with the care of his person or property for him. *See article* 422. If, however, a minor is dependent upon his parent, who appropriates or may appropriate his earnings, such earnings are income of the parent and not of the minor for the purpose of the normal tax and surtax. In the absence of proof to the contrary a parent will be assumed not to have emancipated his minor child and must include in his return any earnings of the minor.

3015 **Art. 404 [Art. 403]. Return of Income of Nonresident Alien.**—A
165 nonresident alien individual shall make or have made a full and
538 accurate return on form 1040 (revised) *or form* 1040 *A* (*revised*) of *his* income received from sources within the United States, regardless of amount, unless the tax on such income has been fully paid at the source. See section 217 of the statute and articles 311–316. The responsible representatives of nonresident aliens in connection with any sources of income which such nonresident aliens may have within the United States shall make a return of such income, and shall pay any and all tax, normal and additional, assessed upon the income received by them in behalf of their nonresident alien principals, in all cases where the tax on income so in their receipt, custody or control shall not have been withheld at the source. The agent of a nonresident alien is responsible for a correct return of all income accruing to his principal within the purview of the agency. The agency appointment will determine how completely the agent is substituted for the principal for tax purposes. Where, upon filing a return of income it appears that a nonresident alien is not liable for tax, but nevertheless a tax shall have been withheld at the source, in order to obtain a refund on the basis of the showing made by the return there should be attached to *it* [the return] a statement showing accurately the amounts of tax withheld, with the names and post-office addresses of all withholding agents. *See article* 376.

3016 **Art. 405 [Art. 404]. Return of Corporate Dividends.**—Dividends on stock of domestic corporations or resident *foreign* [alien] corporations are prima facie income of the record owner of the stock, and such record owner will be liable for any additional tax based thereon, unless a disclosure of the actual ownership is made to the Commissioner on form 1087 (revised) which shall show that the record owner is not the actual owner and who the owner is and his address. In all cases where the actual owner is a nonresident alien individual and the record owner is a person in the United States, the record owner will be considered for tax purposes to have the receipt, custody, control and disposal of the dividend income and will be required to make return for the actual owner, regardless of the amount of the income, and to pay any surtax found by such return to be due.

3017 **Art. 406 [Art. 405]. Verification of Returns.**—All income tax returns must be verified under oath or affirmation. Persons in the naval or military service of the United States may verify their returns before any official authorized to administer oaths for the purposes of those services. Income tax returns executed abroad may be attested free of charge before United States consular officers. Where a foreign notary or other official having no seal shall act as attesting officer, the authority of such attesting officer should be certified to by some judicial official or other proper officer having knowledge of the appointment and official character of the attesting officer.

3017a **Art. 407. Use of Prescribed Forms.** Formerly Art. 626 and same in
1424 effect.—Copies of the prescribed return forms will so far as possible be furnished taxpayers by collectors. Failure on the part of any taxpayer to receive a blank form will not, however, excuse him from making a return. Taxpayers not supplied with the proper forms should make application therefor to the collector in ample time to have their returns prepared, verified and filed with the collector on or before the last due date. Each taxpayer should carefully prepare his return so as fully and clearly to set forth

the data therein called for. Imperfect or incorrect returns will not be accepted as meeting the requirements of the statute. In lack of a prescribed form a statement made by a taxpayer disclosing his gross income and the deductions therefrom may be accepted as a tentative return, and if filed within the prescribed time a return so made will relieve the taxpayer from liability to penalties, provided that without unnecessary delay such a tentative return is replaced by a return made on the proper form. See further articles 443–446.

PARTNERSHIP RETURNS

3018 Art. 411. **Partnership Returns.**—Every partnership must make a
238 return of income regardless of the amount of its [gross or] net income.
1298 The return shall be on form 1065 (revised) and shall be sworn to by one of the partners. Such return shall be made for the taxable year of the partnership, that is, for its annual accounting period (fiscal year or calendar year as the case may be), *irrespective* [regardless] of the taxable years of the partners. See sections [200, 212 and] 218 of the statute *and articles* 321-327. If the partnership makes any change in its accounting period, it shall make its return in accordance with the provisions of section 226 [of the statute] *and article* 431. *See also article* 424.

3018a Art. 412.—Formerly part of Art. 411.—**Contents of Partnership Return.**—The return of a partnership shall state specifically (a) the items of its gross income enumerated in section 213 of the statute; (b) the deductions enumerated in section 214 [of the statute], other than the deduction provided in paragraph (11) of subdivision (a) of that section; (c) the amounts specified in subdivisions (a) and (b) of section 216 [of the statute] received by the partnership; (d) the amount of any income, war profits and excess profits taxes of the partnership paid during the taxable year to a foreign country or to any possession of the United States, and the amount of any such taxes accrued but not paid during the taxable year; (e) the names and addresses of the individuals who would be entitled to share in the net income of the partnership if distributed; (f) the amount of the distributive share of such net income of each such individual; and (g) such other facts as are required by form 1065 (revised). See also sections 222 and 227 *and articles* 381–384 *and* 441–448. [of the statute. A receiver in charge of the business of a partnership shall make a return for it on form 1065 (revised). *See article* 424, ¶3022.]

FIDUCIARY RETURNS

3019 Art. 421. **Fiduciary Returns.**—Every fiduciary, or at least one of
239 joint fiduciaries, must make a return *of income* (a) for the individual
1168 whose income is in his charge, if the net income of such individual is $2,000 or over if married and living with husband or wife or is $1,000 or over in other cases, or (b) for the estate or trust for which he acts, if the net income of such estate or trust is $1,000 or over or if any beneficiary of such estate or trust is a nonresident alien. The return in case (a) and also in case (b) if the tax is payable by the fiduciary shall be on form 1040 (revised), except that it may be on short form 1040 A (revised) where the net income does not exceed $5,000. The return shall be on form 1041 (revised) in case (b) if the tax is payable by the beneficiaries. *In such a case the fiduciary shall include in the return a statement of each beneficiary's distributive share of the net income, whether or not distributed before the close of the taxable year for which the return is made.* See section 219 of the statute and articles

341–346. If the net income of a decedent from the beginning of the taxable year to the date of his death was $1,000, if unmarried, or $2,000, if married, the executor or administrator shall make a return for such decedent. *See article* 305.

3020 Art. 422. **Return by Guardian or Committee.**—A fiduciary acting as the guardian of a minor having a net income of $1,000 or $2,000, according to the marital status of such person, must make a return for such minor on form 1040 (revised) or 1040 A (revised) and pay the tax, unless such minor himself makes a return or causes it to be made. A fiduciary acting as the committee of an insane person having an income of $1,000 or $2,000, according to the marital status of such person, must make a return for such incompetent on form 1040 (revised) or 1040 A (revised) and pay the tax. [In either case, if the fiduciary is also acting for other beneficiaries, such a return shall be rendered in addition to the returns required by the preceding article.]

3021 Art. 423. **Returns Where Two Trusts.**—In the case of two or more trusts the income of which is taxable to the beneficiaries, which were created by the same person and are in charge of the same trustee, the trustee shall make a single return on form 1041 (revised) for all such trusts, notwithstanding that they may arise from different instruments. When, however, a trustee holds trusts created by different persons for the benefit of the same beneficiary, he shall make a return on form 1041 (revised) for each trust separately.

3022 Art. 424. **Return by Receiver.**—A receiver who stands in the stead of an individual or corporation must render a return of income and pay the tax for his trust, but a receiver of only part of the property of an individual or corporation need not. If the receiver acts for an individual the return shall be on form 1040 (revised) or 1040 A (revised). When acting for a corporation a receiver is not treated as a fiduciary, and in such *a* case the return shall be made as if by the corporation itself. See section 239 of the statute *and article* 622. A receiver in charge of the business of a partnership shall render a return on form 1065 (revised). A receiver of the rents and profits appointed to hold and operate a mortgaged parcel of real estate, but not in control of all the property or business of the mortgagor, and a receiver in partition proceedings, are not required to render returns of income. In general, statutory receivers and common law receivers of all the property or business of an individual or corporation must make returns. *See also section* 256 *of the statute and articles* 1071–1080. [Every receiver for an individual, partnership, or corporation, whether or not of all the property or business, must render a return of information under section 256 of the statute.]

3023 Art. 425. **Return for Nonresident Alien Beneficiary.**—Where a citizen or resident fiduciary has the distribution of trust income for which there is a nonresident alien beneficiary, the fiduciary must make a return on form 1040 (revised) or 1040 A (revised) for such nonresident alien and pay the tax. If there are two or more beneficiaries, the fiduciary shall render a return on form 1041 (revised) and also a return on form 1040 (revised) or 1040 A (revised) for each nonresident alien beneficiary.

RETURNS WHEN ACCOUNTING PERIOD CHANGED

3024 **Art. 431. Returns when Accounting Period Changed.**—No
247 return can be made for a period of more than 12 months. A
1479 separate return for a fractional part of a year is, therefore, required wherever there is a change, with the approval of the Commissioner, in the basis of computing net income *from one taxable year to another taxable year* or wherever a taxpayer *making* [makes] his first return of income *does so* on the basis of a fiscal year. The periods to be covered by such separate returns in the several cases are stated in the statute. The requirements with respect to the filing of a separate return and the payment of tax for a part of a year are the same as for the filing of a return and the payment of tax for a full taxable year closing at the same time. See sections 227 and 250 of the statute and articles 441–448 and 1001. The tax on net income computed on the basis of *the* [a] period for which a separate return is made shall be paid thereon at the rate for the calendar year in which such period is included, and the credits for personal exemption and dependents shall be such proportion of the full credits as the number of months in such period bears to 12 months. See section 216 and articles 305. *See further section* 212 *and articles* 25 *and* 26, *and as to corporations see sections* 232 *and* 239 *and articles* 531 *and* 626. [See as to corporations sections 223 and 239 of the statute.]

TIME AND PLACE FOR FILING RETURN

3025 **Art. 441. Time for Filing Return.**—Returns of income must be
253 made on or before the fifteenth day of March following the taxable
1472 year, except that returns on the basis of a fiscal year other than the calendar year must be made on or before the fifteenth day of the third month following the close of the fiscal year. Returns on the basis of fiscal years ending in 1918 of taxpayers who made returns on the calendar year basis for the year 1917 shall be made on or before the fifteenth day of March, 1919. *See also sections* 250 *and* 253 *of the statute and articles* 1001–1013 *and* 1041. [Returns of individuals can not be accepted prior to the close of the taxable year, except that administrators or executors may immediately after their discharge upon final accounting file with the collector a return of income of the estate for the year in which the administration was closed, and should pay the tax found by such return to be due immediately upon receipt of notice and demand for the amount of such tax. There should be attached to this return a certified copy of the order or a certificate under seal, setting forth the fact of final accounting and the discharge of the executor or administrator. An ancillary administrator, being merely an agent of the domiciliary administrator, should transmit to him all information as to the income of the estate received by the ancillary administrator, to the end that the original administrator may make a return covering the entire income of the estate. *In connection with the above, cut out here, see next paragraph.*]

3025a Art. 442. **Time for Filing Return upon Death or Termination of**
1223 **Trust.** (For former provisions see part cut out in ¶3025 above).—
As soon as possible after his appointment and qualification, without waiting for the close of the taxable year, an executor or administrator shall file a return of income for the decedent. Upon the completion of the administration of an estate and final accounting an executor or administrator shall file a return of income of the estate for the portion of the taxable year in which the administration was closed, attaching to the return a certified copy of the order for his

discharge. An ancillary administrator need make no separate return if the domiciliary administrator includes in his return the entire income of the estate. Similarly, upon the termination of any other trust the trustee shall make a return without waiting for the close of the taxable year. In any such case the requirements with respect to the payment of the tax are the same as if the return were for a full taxable year closing at the end of the month during which the decedent dies or the estate is settled or the trust is terminated, as the case may be. The payment of the tax before the end of the taxable year in such circumstances does not relieve the taxpayer from liability for any additional tax which might subsequently be imposed upon income of the taxable year.

3026 Art. 443 [Art. 442]. Extension of Time by Collector.—It is important that the taxpayer render before the return due date a return as complete and final as it is possible for him to prepare. However, in cases of sickness or absence collectors are authorized to grant an extension of not exceeding 30 days, where in their judgment such further time is actually required for the making of an accurate return. See article 1002. The application for such extension must be made prior to the expiration of the period for which the extension is desired. [Otherwise the return will be considered delinquent and liability to penalty will attach.] The absence or sickness of one or more officers of a corporation at the time the return is required to be filed will not be accepted as a reasonable cause for failure to file the return within the prescribed time, unless it is satisfactorily shown that there were no other principal officers available and sufficiently informed as to the affairs of the corporation to make and verify the return. *As a condition of granting an extension of time for filing a return the collector may require the submission of a tentative return and estimate of the tax on form* 1040 *T in the case of individuals, or on form* 1031 *T in the case of corporations, and the payment of one-fourth of the estimated amount of tax.* [*For remainder of the old Art. 442, see next paragraph.*]

3026a Art. 444 [442]. Extension of Time by Commissioner.—If before the end of *an extension of* 30 days *granted by the Collector* an accurate return can not be made, an appeal for a further extension must be made to the Commissioner with a full recital of the causes for the delay. [and] The Commissioner will not grant an additional extension without a clear showing that a complete return can not be made at the end of the 30 day period. The Commissioner will grant no *such* extension[, thus requested,] beyond the original due date of the *third* [second] installment of the tax. Either a complete or a tentative return, as complete as possible and giving a ground for assessment of the tax, must be submitted on or before the due date as extended, and the tax shown to be due must be paid with the submission of the return. If a complete return can not be made at that time, the facts must be submitted to the Commissioner for such further action as he deems warranted. *In exceptional circumstances the taxpayer may apply originally to the Commissioner for an extension of time.* [A tentative return will not be accepted as a basis for a partial or preliminary payment of tax on the due date, if it be possible for the taxpayer to submit on or before that day a complete and final return.]

3027 Art. 445 [Art. 443]. Extension of Time in the Case of Persons Abroad.—In view of the disturbed conditions abroad and the consequent interference with the usual channels of communication, an extension of time for filing returns of income for 1918 and subsequent years *and for paying the tax* is hereby granted in the case of nonresident alien individuals and *nonresident foreign* corporations, or their proper representatives in the United

States, and of American citizens residing or traveling abroad, including persons in military or naval service on duty outside the United States, for such period as may be necessary, not exceeding 90 days after proclamation by the President of the end of the war with Germany. *The whole tax shown to be due must be paid at the time of filing the return.* In all such cases an affidavit must be attached to the return, stating the causes of the delay in filing it, in order that the Commissioner may determine whether the failure to file the return in time was due to a reasonable cause and not to wilful neglect. If the showing justifies the conclusion that the failure to file the return in time was excusable, no penalty [by way of addition to the tax] will be imposed.

3028 Art. 446 [Art. 444]. **Extension of Time in the Case of Enemies.**—An extension of time is hereby granted for such period as may be necessary, not exceeding 90 days after proclamation by the President of the end of the war with Germany, for filing returns of income for 1918 and subsequent years *and for paying the tax* by or for *nonresident* enemies or allies of enemies, as defined by section 2 of the Trading with the Enemy Act of October 6, 1917, not holding licenses granted under the provisions of that act. *The whole tax shown to be due must be paid at the time of filing the return.* This extension, however, does not authorize any delay in filing returns of information. This extension is also subject to the condition that all persons who on October 6, 1917, had or since have had or may hereafter have control of any money or other property for any such enemy or ally of enemy, or who on October 6, 1917, were or since have been or may hereafter be indebted to any such enemy or ally of enemy, shall hold and deliver all said money and property in all respects subject to the Trading with the Enemy Act and to the orders of the President and of the alien property custodian thereunder, and shall in due course file returns of income in respect of all such money and property for such period as may elapse or have elapsed prior to the actual delivery of such money and property to the alien property custodian. As to withholding at the source, see article 375.

3028a Art. 447. **Last Due Date.** Formerly Art. 652.—The last due date
1475 is the last day upon which a return is required to be filed in accordance with the provisions of the statute or the last day of the period covered by an extension of time granted by the collector or Commissioner. When the last due date falls on Sunday or a legal holiday, the last due date for filing returns will be the day following such Sunday or legal holiday. If placed in the mails the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed and postage paid, in ample time to reach the office of the collector on or before the last due date, no penalty will attach should the return not be actually received by such officer until subsequently to that date. Where a question may be raised as to whether or not the return was posted in ample time to reach the collector's office on or before the due date, the envelope in which the return was transmitted will be preserved by the collector and forwarded to the Commissioner with the return.

3029 Art. 448 [Art. 445]. **Place for Filing Return.**—Returns of income must be *delivered or mailed* [made] to the collector for the district of the legal residence or principal place of business of the person making the return. [The returns will be forwarded by the collector by registered mail or express to the Commissioner with the list for the month in which they were filed.]

Persons *having no domicile or place of business in the United States, and persons* in the military or naval service of the United States, may file their returns of income with the collector [of internal revenue] at Baltimore.

UNDERSTATEMENT IN RETURNS

3030 258 1538 **Art. 451. Understatement of Income.**—If a collector suspects that the amount of any income is understated in a return, he may on his own initiative take up the matter with the taxpayer and upon becoming satisfied that the amount was understated may increase it accordingly, subject to the right of the taxpayer to appeal to the Commissioner. The Commissioner, however, without the intervention of the collector may exercise original jurisdiction in cases of understatements or other errors in returns, in which event sections 250 and 1305 of the statute and section 3176 of the Revised Statutes, as amended by section 1317 of the statute, are applicable instead of section 228. See articles 1002, 1005, and 1711. Section 3172 of the Revised Statutes, as amended by section 1317 of the Revenue Act of 1918, provides:

> Sec. 3172. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

See also section 3173 of the Revised Statutes as amended by section 1317 of the Revenue Act of 1918.

END OF PART I.

PART II–A.

CORPORATIONS.

[Beginning on page 411.]

PART III

[OF REGULATIONS NO. 45.]

ADMINISTRATIVE PROVISIONS

PAYMENT OF TAXES

3031 361 2339 **Art. 1001. Time for Payment of Tax.**—The tax, unless paid at the source, is to be paid to the collector in four equal installments, the first at the time for filing the return and the others at intervals of three months thereafter, or it may at the option of the taxpayer be paid in a single payment on or before the time for filing the return or such time as extended. *See section* 227 *of the statute and articles* 441–447. An *unconditional* extension of time for filing a return *will* [may] postpone the date for payment of the first installment, but will not postpone the date of payment of the other installments unless so specified in each case. Upon failure to pay an installment on time, all of the tax remaining unpaid becomes due and payable upon notice and demand. Upon recomputation of the tax, if the amount already paid exceeds the correct amount of the installment or of the whole tax, the excess shall be credited against subsequent installments or other similar taxes then due from the taxpayer

or, if there is no such installment or tax, shall be refunded to him; but if the amount already paid is less than the correct amount of the installment or tax then due, the difference shall be paid upon notice and demand *with interest.* See section 252 [of the statute] and articles 1034–1036. [When the due date for the payment of taxes falls upon Sunday or a legal holiday, the due date will be the day next following such Sunday or legal holiday.]

3032 Art. 1002. **Payment of Tax When No Proper Return.**—Section
443 3176 of the Revised Statutes, as amended by section 1317 of the
1549 Revenue Act of 1918, provides [¶443 and ¶1549]:
Accordingly, if a return is not made on time or is false, and the collector or Commissioner makes a return, the amount of tax determined to be due under such substitute return shall be paid in full upon notice and demand by the collector. See further articles 443-446, 1004 and 1005.

3033 Art. 1033. **Interest on Tax.**—Where the time for the payment of any installment of the tax is postponed at the request of the taxpayer, interest at the rate of 6 per cent per annum is added from the original due date. If an understatement of the tax in the return is due to the negligence of the taxpayer, but without intent to defraud, interest at the rate of 12 per cent per annum is added to the amount of the deficiency of each installment from the time the installment was due. If any tax remains due and unpaid for ten days after notice and demand by the collector, or in the case of the first installment as computed by the taxpayer remains due and unpaid for ten days, interest at the rate of 12 per cent per annum is added from the due date, except that the interest on any amount which is the subject of a bona fide claim for abatement shall be at the rate of 6 per cent per annum, and except that no interest is added in the case of estates of insane, deceased or insolvent persons. But if any part of a claim for abatement on the ground of a loss in inventory under section 214(a) (12) *or section* 234(a) (14) of the statute is disallowed, interest from the *original* due date at the rate of 12 per cent per annum will be added to the tax not abated; and interest is to be added in all cases in which the demand of payment is made of the taxpayer personally, although he subsequently dies, or becomes insane or insolvent, so that collection of the tax is made from his estate in the hands of his representative. See further articles 1005 and 1006.

3034 Art. 1004. **Penalty for Failure to File Return.**—In case of failure to make a return on time, a penalty of 25 per cent of the amount of the tax is added to it, unless the return is later filed and the failure to file it is satisfactorily shown to be due to a reasonable cause. See article 1002. Two classes of delinquents are liable to the penalty: (a) those who do not file returns and for whom returns are made by the collector or Commissioner; and (b) those who file tardy returns and are unable to show reasonable cause for the delay. Taxpayers wishing to avoid the penalty must make an affirmative showing of the facts alleged as a reasonable cause for failure to make a return on time in the form of an affidavit under oath, which should be attached to the return. [Where an overdue return is filed without such an affidavit, the collector may notify the taxpayer that unless within ten days an affidavit is filed fully explaining the cause of delinquency, the 25 per cent penalty will be asserted. If the explanation is not then furnished, the 25 per cent penalty will be assessed with the tax.] If *such an* [the] explanation is furnished with the return or upon the collector's demand, the collector, unless otherwise directed by the Commissioner, will forward the affidavit with the return, and if the Commissioner determines that the delinquency was [not]

due to a reasonable cause the 25 per cent penalty will *not* be assessed. "Reasonable cause" is such a condition of fact that had the taxpayer in default exercised ordinary business care and prudence it would have been impracticable or impossible for him to file a return in the prescribed time. See also section 253 of the statute and article 1041.

3035 **Art. 1005. Penalty for Understated Return.**—(a) If an understatement of the amount of the tax in a return of income is due to negligence on the part of the taxpayer, but without intent to defraud, a penalty of 5 per cent of the amount of the deficiency is added; but (b) if the understatement of the tax is false with intent to evade the tax, a penalty of 50 per cent of the amount of the deficiency is added. (c) In case a false or fraudulent return is willfully made, other than as specified in (b) above, a penalty of 50 per cent of the amount of the tax is added. See articles 1002 and 1003. In general, negligence is attributable to the taxpayer if he computes the tax in disregard of the instructions on the return form or otherwise incorrectly, unless he can show that his error was due to an honest misunderstanding of the facts or the law of which an average reasonable man might be capable. See also section 253 of the statute and article 1041.

3036 **Art. 1006. Penalty for Nonpayment of Tax.**—If any tax or installment thereof remains due and unpaid for ten days after notice and demand by the collector (the instructions on the return serve as notice and demand in the case of the first installment as computed by the taxpayer), a penalty of 5 per cent is added. When, however, upon an assessment of a tax and demand made for payment, a bona fide claim for its abatement is filed within 10 days after such demand, no penalty is imposed. Upon receipt of a notice of rejection of the claim (or so much thereof as is not allowed), the collector will notify the claimant and demand the payment of the tax. If the tax is not then paid within 10 days, the 5 per cent penalty will be assessed on the amount of tax not abated. If abatement of the entire tax assessed is not demanded in a claim, and the balance of the tax is not paid within the required 10 days, the 5 per cent penalty will immediately accrue on such balance. See also article 1003. The estate of a deceased person, regardless of the date of his death, or of an insane or insolvent person, cannot be charged with liability to the 5 per cent penalty on account of his or the fiduciary's delinquency in making payment of taxes. Where a warrant of distraint is served, $5 is added. For other penalties see section 253 of the statute and article 1041.

3037 **Art. 1007. Notice and Demand of Payment.**—The service of a notice and demand by the collector on form 17 is complete upon mailing it, and the time within which the tax must be paid runs from the date of mailing the notice and not of its receipt by the taxpayer. But payment for the tax must actually reach the collector within the ten day period, and merely mailing a remittance before the expiration of the ten days is not sufficient. So, to avoid the prescribed penalties, no more than ten days may elapse after the mailing of the notice before the payment is in the collector's hands. See section 3184 of the Revised Statutes. By reason, however, of absence from their homes or places of business in foreign countries or in the military or other service of the country and the consequent delay in receiving mail, or [in the case of a corporation,] by reason of the location of *the residence of an individual or of the office of a corporation* [its office] to which the notice was addressed at a distance from the collector's office, it is impossible for many persons to receive a notice and demand and to

make payment of the tax so that such payment may be received by the collector within the ten day period following the service of notice and demand, and in all such cases the collector will enter on the notice as the date on which the tax becomes due and payable a date as nearly as possible ten days after the time that the notice should be received in the ordinary course of the mails by the taxpayer. In such cases when it appears that a remittance for the tax was placed in the mails within the ten day period after the date specfied in the notice, and in cases where tardiness is occasioned because the notice was not delivered in due time by reason of delay in the mail and satisfactory evidence of that fact is furnished, the penalty and interest will not be collected.

3038 439 2651 **Art. 1008. Collection of Tax by Suit.**—Taxes, fines, penalties and forfeitures may be sued for and recovered in the name of the United States in the district courts of the United States. Suits for the collection of taxes may be brought at any time within five years after the return was due or was made, whether the taxes have been assessed, or are assessable, or not. In the case of false or fraudulent returns with intent to evade the tax no statute of limitations runs against the Government. Section 3164 of the Revised Statutes, as amended by section 1317 of the Revenue Act of 1918, provides [¶439 and ¶2651]:
However, no suit for the recovery of unpaid taxes or of any fine, penalty or forfeiture shall be commenced until the collector shall have submitted to the Commissioner a full report of all material facts and circumstances in the case and shall have received from him express authority to proceed. See sections 3212-3216 of the Revised Statutes, and also Regulations No. 2 (revised) and Regulations No. 12 (revised).

3039 **Art. 1009. Collection of Tax by Distraint.**—If any person liable to pay any taxes neglects or refuses to pay them within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect such taxes with 5 per cent additional and interest at 12 per cent per annum by distraint and sale of the goods, chattels or effects, including stocks, securities and evidences of debt, of the person delinquent. When goods, chattels or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect such taxes by seizure and sale of real estate. See further sections 3186 (as amended by the Act of March 4, 1913), 3187–3196, 3197 (as amended by the Act of March 1, 1879), 3198–3202, 3203 (as amended by the Act of March 1, 1879), 3204–3207, 3208 (as amended by the Act of March 1, 1879) and 3209 of the Revised Statutes and Regulations No. 12 (revised). Distraint may also be used against a delinquent collector. See section 3217 of the Revised Statutes.

3040 **Art. 1010. Enforcement of Tax Lien by Bill In Equity.**—In any case where there has been failure to pay the tax and it has become necessary to seize and sell real estate to satisfy it, a bill in equity may be filed in a district court of the United States to enforce the lien of the United States for tax upon any real estate in which the delinquent has any right, title or interest. This remedy does not supersede distraint, but is cumulative. In the event of nonpayment of a tax after demand it becomes a lien in favor of the United States from the time when the assessment list was received by the collector upon all property and rights to property belonging to the taxpayer, except that the lien is not valid as against any mortgagee, purchaser or judgment creditor until notice thereof is filed in the proper pub-

lic office or offices on form 668. See sections 3186 (as amended by the Act of March 4, 1913) and 3207 of the Revised Statutes and Regulations No. 12 (revised).

3041 **Art. 1011. Compromise of Tax Cases.**—The Commissioner, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon, and with the advice and consent of the Secretary and the recommendation of the Attorney-General may compromise any such case after suit thereon has been commenced by the United States. Accordingly, the power to compromise extends to (a) both civil and criminal cases; (b) cases whether before or after suit; and (c) both taxes and penalties. Refunds can not be made of accepted offers in compromise in cases where it is subsequently ascertained that no violation of law was involved. See further sections 3229 and 3469, and sections 5292 and 5293 (as amended by the Act of February 27, 1877), of the Revised Statutes.

3042 **Art. 1012. Assessment of Tax.**—When the returns are received at the collectors' offices, they are examined and listed before being forwarded to the Commissioner. If it appears that the tax is greater or less than shown in the return, it is recomputed. After checking the figures the Commissioner assesses the tax on the basis of the collectors' lists. The collectors then send out bills for the taxes, either as computed by the taxpayer or as recomputed. If a taxpayer believes that he has been overassessed, he may file a claim for abatement or (after payment of the tax) for a refund of the excess. See section 252 of the statute and articles 1031–1038. As soon as practicable the returns are carefully audited by accountants in the office of the Commissioner at Washington, assisted where necessary by reports of the examination of taxpayers' books and records made by revenue agents in the field. If error in a return is detected, the taxpayer is notified accordingly and an additional assessment is made against him or he is given the opportunity to file a claim for a refund, as the case may be. Any assessment must be made within five years after the return was due or was made, except in the case of false returns with intent to evade the tax. See sections 228, 1305 and 1318 of the statute and articles 451 and 1711.

3043 **Art. 1013. Declaration of Termination of Taxable Period.**—In
383 the case of a taxable person who designs by immediate departure
2425 from the country or otherwise to avoid payment of the tax for the preceding or current taxable year, the Commissioner may so find upon evidence satisfactory to him and may declare the taxable period for such person terminated at the end of the month last past, causing the service upon him of a notice and demand for immediate payment of the tax declared due and any other tax unpaid. *In such a case the taxpayer is entitled to a full personal exemption and credit for dependents. See section* 216 *of the statute and article* 305. If suit is necessary to collect the tax, the Commissioner's finding is presumptive evidence of the taxpayer's design. A person who is not in default in making returns or in paying other taxes may procure the postponement until the usual time of the payment of taxes declared or declarable to be due pursuant to this article by depositing with the Commissioner United States bonds of a principal amount double the estimated amount of taxes due from such person for the taxable year or by furnishing such other security as may be approved by the Commissioner. *See section* 1320.

RECEIPTS FOR TAXES.

3044 Art. 1021. **Receipts for Tax Payments.**—Upon request a collector
384 will give a receipt for each tax payment. In the case of payments
2465 made by check or money order the cancelled check or the money order receipt is usually a sufficient receipt. In the case of payments in cash, however, the taxpayer should in every instance require and the collector should furnish a receipt.

REFUNDS.

3045 Art. 1031. **Authority for Abatement, Credit and Refund of Taxes.**—
386 Authority for the *credit*, refund or abatement of taxes erroneously
436 collected or assessed is contained in section 252 of the statute and in
437 section 3220 of the Revised Statutes, as amended by section 1316
2488 of the Revenue Act of 1918, which provides [¶ 436 and ¶ 2497]:
2497 Section 3225 of the Revised Statutes, as amended by section 1316
2590 of the Revenue Act of 1918, however, provides [¶ 437 and ¶ 2590]: Authority for the abatement of uncollectible taxes due from persons absconded or insolvent is contained in section 3218 of the Revised Statutes. These provisions apply to the income and *war profits and* excess profits taxes imposed by the present statute and also to the excise tax under the Act of 1909, the income tax under the Acts of 1913 and 1916, and the income and excess profits taxes under the Act of 1917.

3046 Art. 1032. **Claims for Abatement of Taxes Erroneously Assessed.**—Claims by the taxpayer for the abatement of taxes or penalties erroneously or illegally assessed or abatable under remedial acts shall be made on form 47. They must be sustained by the affidavits of the parties against whom the taxes were assessed, or of other parties cognizant of the facts. When a tax has been assessed and turned over to the collector, the presumption is that the assessment is correct. The burden of proof in rebutting the presumption and showing that it was improperly or illegally assessed, or that relief should be given under a remedial statute, rests upon the applicant for abatement. The affidavits must therefore contain full and explicit statements of all the material facts relating to the claim in support of which they are offered and to the proper consideration of which they are essential. The legality of the claim is to be determined by the Commissioner upon the facts presented by the affidavits. The filing of a claim for abatement does not necessarily operate as a suspension of the collection of the tax or make it any less the duty of the collector to exercise due diligence to prevent the collection of the tax being jeopardized. He should, if he considers it necessary, collect the tax and leave the taxpayer to his remedy by a claim for refund. See further Regulations No. 14 (revised). A collector may himself present once a month a blanket claim on form 47 for the abatement of taxes coming within certain classes of taxes erroneously assessed.

3047 Art. 1033. **Claims for Abatement of Uncollectible Taxes.**—When a tax is found to be uncollectible, the collector or deputy collector who made the demand for payment and is conversant with the facts may prepare a claim for abatement on form 53. See Regulations No. 14 (revised). Although credits allowed on account of insolvency or absconding release the collector from the obligation created by his receipt for the amount credited, the obligation to pay still remains upon the person assessed. It

is the duty of the collector to use the same diligence to collect a tax after it has been abated as uncollectible as before abatement. Collectors should therefore keep a record of all taxes thus credited and of the persons from whom they are due, and should enforce payment whenever it is in their power to do so.

3047a Art. 1034. Claims for Credit of Taxes Erroneously Collected.—*Any amount of income, war profits or excess profits tax paid in excess of that properly due shall be credited against any such taxes due from the taxpayer under any other return. To obtain such credit the taxpayer should proceed as follows:*

3047b (1) *Where the credit demanded is equal to or less than any outstanding assessment of tax, a taxpayer desiring to obtain such credit shall file with the collector for the district in which his original return was filed a claim on form* 47 *A, which shall be sworn to and shall contain the following statements: (a) business engaged in by claimant; (b) character of assessment; (c) amount of tax paid and for what taxable year; (d) portion of tax under (c) claimed as a credit; (e) unpaid assessment against which credit is asked and for what taxable year; and (f) all facts regarding the overpayment.*

3047c (2) *Where the amout claimed as a credit is greater than the outstanding assessment of tax, a taxpayer desiring to obtain such credit and the refund to which he is entitled shall file, in addition to the claim for credit required to be made on form* 47 *A for the amount of the outstanding assessment, a claim for refund of the overpayment in excess of the credit. See article* 1036. *This claim for refund may be attached to the claim for credit or it may be separately filed with the Commissioner. All the facts regarding the total overpayment should be stated in the claim for refund and a reference made to such claim in the claim for credit.*

3047d Art. 1035. Action on Claims for Credit.—*Upon receipt of a claim for credit on form* 47 *A the collector shall certify thereon the required information concerning all outstanding assessments and payments covered thereby and shall note on his records that a claim for credit has been filed. He shall thereupon transmit the claim to the Commissioner. Due notice will be given the collector and the taxpayer of the action taken on the claim. A schedule of credit claims on form* 7220 *A will be transmitted to the collector once a month and formal credit shall be taken by the collector at that time. If a claim is allowed against additional taxes due for other years, but such other taxes have not yet been assessed, only the amount of the excess of such taxes over the overpayment shall be assessed, or the excess of the overpayment over such other taxes due shall be refunded, as the case may be. A taxpayer desiring to convert a claim for refund previously filed into a claim for credit may file with the collector a claim on form* 47 *A, referring in it to such claim for refund. Upon its receipt by the Commissioner the claim for credit will be attached to the claim for refund and will be adjusted in the same manner as if the taxpayer had originally filed the claim for credit. The effective date of filing of the claim for credit shall be the actual date of filing such claim with the collector. The filing of a claim for credit against a tax due under another return shall be subject to the same rules with respect to the addition of interest and penalties as if the taxpayer had filed a claim for abatement of the tax against which credit is desired. See articles* 1003 *and* 1006.

3048 Art. 1036 [Art. 1034]. **Claims for Refund of Taxes Erroneously Collected.**—Claims by the taxpayer for the refunding of taxes and penalties erroneously or illegally collected shall be made on form 46. In this case, as in that of claims for abatement, the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath. It should be accompanied by the collector's receipt or the cancelled check showing payment of the tax. In the case of a taxpayer's death, certified copies of the letters of administration or letters testamentary, or other similar evidence, should be annexed to the claim to show the authority of the administrator or executor. The affidavit may be made by an agent of the person assessed, but in such a case a power of attorney must accompany the claim. [The lodging of a claim for refund made out in due form with the proper collector for the purpose of transmission to the Commissioner in the usual course of business is in legal effect a presentation of the appeal to the Commissioner.] Warrants in payment of claims allowed will be drawn in the names of the persons entitled to the money and shall unless otherwise directed be sent by the Treasurer of the United States directly to the proper persons or their duly authorized attorneys or agents. See further Regulations No. 14 (revised). In the case of mere overpayments by taxpayers the collector may repay the excess, subject to confirmation by the Commissioner of a claim for the refunding of such payments made by the collector on form 751 (revised). *The Commissioner has no authority to refund on equitable grounds penalties legally collected.*

3049 Art. 1037 [Art. 1035]. **Suits for Recovery of Taxes Erroneously Collected.**—No suit shall be maintained in any court for the recovery of any tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, until an appeal by a claim for *credit or* refund shall have been duly made to the Commissioner and a decision of the Commissioner has been had therein, unless such decision is delayed more than six months. The cause of action accrues upon an unfavorable decision by the Commissioner or at the expiration of six months after an appeal without action thereon, and no suit may be brought after two years from the time the cause of action accrued. No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. "*Restraining*" *is used in its broad popular sense of hindering or impeding, as well as prohibiting or staying, and the provision is not limited in its application to suits for injunctive relief. The prohibition of such suits cannot be waived by any officer of the Government.* See sections 3224, 3225 (as amended by the Revenue Act of 1918), 3226 (as amended by the Act of February 27, 1877) and 3227 of the Revised Statutes.

3050 Art. 1038 [Art. 1036]. **Claims for Refund of Sums Recovered by Suit.**—(a) Claims by taxpayers for the amount of a judgment representing taxes or penalties erroneously collected should be made on form 46. The claimant should state the grounds of his claim under oath, giving the names of all the parties to the suit, the cause of action, the date of its commencement, the date of the judgment, the court in which it was recovered, and its amount. To this affidavit there should be annexed a certified copy of the final judgment, a certificate of probable cause, and an itemized bill of the costs paid receipted by the clerk or other proper officer of the court, together with a certified copy of the docket entries of the court in the case or so much thereof as may be required by the Commissioner. When a recovery is had in any suit or proceeding against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid

to him and by him paid into the Treasury, in the performance of his official duty, and the court certifies that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector or other officer, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury. See section 989 of the Revised Statutes. (b) If the judgment debtor shall have already paid the amount recovered against him, the claim should be made in his name. There should also be a certificate of the clerk of the court in which the judgment was recovered (or other satisfactory evidence), showing that the judgment has been satisfied and specifying the exact sum paid in its satisfaction, with a detail of all items of costs which were paid by the judgment debtor or for which he is liable. See further article 1031 and Regulations No. 14 (revised).

PENALTIES.

3051 388 1572 **Art. 1041. Specific Penalties.**—A penalty of not more than $1,000 attaches for failure punctually to make a required return, whether of income, withholding or information, or to pay or collect a required tax. If the failure is willful, however, or an attempt is made to defeat or evade the tax, the offender is liable to imprisonment and to a fine of not more than $10,000 and costs. See also the Act of July 5, 1884. In addition to these specific penalties ad valorem penalties are imposed in various cases. An ad valorem penalty is assessed and collected as a part of the tax, while a specific penalty is recoverable only by suit. See section 250 of the statute and articles 1004, 1005 and 1006.

RETURNS OF PAYMENTS OF DIVIDENDS.

3052 389 1393 **Art. 1051. Return of Information as to Payments of Dividends.**—When directed by the Commissioner, either specially or by general regulation, every domestic or resident foreign corporation and every personal service corporation shall render a return on form 1097 of its payments of dividends and distributions to stockholders for such period as may be specified, stating the name and address of each stockholder, the number and class of shares owned by him, the date and amount of each dividend paid him, and when the surplus out of which it was paid was accumulated.

RETURNS OF BROKERS.

3053 390 1396 **Art. 1061. Return of Information by Brokers.**—When directed by the Commissioner, either specially or by general regulation, every person doing business as a broker shall render a return on form 1100, showing the names and addresses of customers to whom payments were made or for whom business was transacted during the calendar year or other specified period next preceding *and giving the other information called for by the form.*

INFORMATION AT SOURCE.

3054 391 1314 **Art. 1071. Return of Information as to Payments of $1,000.**—All persons [including disbursing officers and employees of the United States and fiduciaries,] making payment to another person of fixed or determinable income of $1,000 or more in a taxable year must

render a return thereof to the Commissioner (Sorting Division) for the preceding calendar year on or before March 15 of each year, except as specified in articles 1073, 1074, 1075, 1076 and 1079. The return shall be made in each case on form 1099 (revised), accompanied by a letter of transmittal on form 1096 (revised) showing the number of returns filed and the aggregate amount represented by the payments. The street and number where the recipient of the payment lives and whether he is single, married or head of a family should be stated, if possible. Where no present address is available, the last known post-office address must be given. *Although to make necessary a return of information the income must be fixed or determinable, it need not be annual or periodical. See article* 362.

3055 **Art. 1072. Return of Information as to Payments to Employees.**—The names of all employees to whom payments exceeding $1,000 a year are made, whether such total sum is made up of wages, salaries, commissions or compensation in any other form, must be reported. Heads of branch offices and subcontractors employing labor, who keep the only complete record of payments therefor, should file returns of information in regard to such payments directly with the Commissioner. When both main office and branch office have adequate records, the return should be filed by the main office. In the case of an employer having a large number of employees who are moved from place to place as the exigencies of the service require, and who consequently has no complete record of annual payments to them at any one place, the salary of two representative months may be taken to establish a fair monthly wage, and unless the yearly payment based on this estimate in the case of an employee amounts to $1,000 or more, no return of payments to such employee is required. *See articles* 32–34. [When living quarters such as camps are furnished for the convenience of the employer, the ratable cost need not be added to the cash compensation of the employee in determining whether it equals $1,000 annually. But where a person receives as compensation for services rendered a salary and in addition thereto living quarters, the value to such person of the quarters furnished constitutes income subject to tax, and a return of information is required in such case where the cash compensation received plus the value of living quarters furnished equals $1,000 for the year.]

3055a **Art. 1073. Return of Information by Partnerships, Personal Service**
1314 **Corporations and Fiduciaries.**—*Partnerships and personal service*
1348 *corporations shall prepare reports on form* 1099 (*revised*) *for each member of the partnership or personal service corporation, and fiduciaries shall prepare such reports for each beneficiary of the estate or trust, showing in every case the distributive shares of the members or beneficiaries, whether or not actually distributed. The words "Partnership," "Personal service corporation"* or *"Fiduciary," as the case may be, should be entered on the blank line of the form under "Kind of income paid." Such reports on form* 1099 (*revised*) *are to be filed with the collector with the returns of income of such partnerships, personal service corporations or fiduciaries, instead of being transmitted to the Commissioner accompanied by form* 1096 (*revised*).

3056 **Art. 1074 [Art. 1073]. Cases Where no Return of Information Required.**—Payments of the following character, although over $1,000, need not be reported in returns of information on form 1099 (revised): (a) payments of interest on obligations of the United States; (b) dividends paid by domestic or resident foreign corporations (*other than distributions by personal service corporations*); (c) payments by a broker to his customers; (d) pay-

ments made to corporations; (e) bills paid for merchandise, telegrams, telephone, freight, storage and similar charges; (f) payments to employees for board and lodging while traveling in the course of their employment; (g) annuities representing the return of capital; (h) payments of rent made to real estate agents (but the agent must report payments to the landlord if they amount to $1,000 or more annually); (i) payments made by branches of business houses located in foreign countries to alien employees serving in foreign countries; and (j) payments made by the United States Government to sailors and soldiers *and to its civilian employees* [not in excess of $3,500].

3057 398 1350 **Art. 1075 [Art. 1074]. Return of Information as to Interest on Corporate Bonds.**—In the case of payments of interest, regardless of amount, upon bonds and similar obligations of domestic or resident *foreign* corporations, the original ownership certificates, when duly filed, shall constitute and be treated as returns of information. If a bondholder files no ownership certificate in the case of payments of interest on registered bonds, the withholding agent shall make out such a certificate in each instance and file it with his monthly return [on form 1012 (revised)]. See sections 221 and 237 of the statute and articles 361–376.

3058 **Art. 1076 [Art. 1075]. Return of Information as to Payments to Nonresident Aliens.**—In the case of payments *of annual or periodical income* to nonresident alien individuals or to foreign corporations not engaged in trade or business within the United States and not having any office or place of business therein, the returns by withholding agents on forms 1098 (revised) and 1042 (revised) shall constitute and be treated as returns of information. See sections 221 and 237 of the statute and articles 361–376.

3059 399 1352 **Art. 1077 [Art. 1076]. Source of Information as to Foreign Items.**—The term "foreign item," as here used, means any dividend upon the stock of a nonresident foreign corporation or any item of interest upon the bonds of foreign countries or nonresident foreign corporations, whether or not such dividend or interest is paid in the United States or by check drawn on a domestic bank. (a) Wherever a foreign country or nonresident foreign corporation issuing bonds has appointed *a* paying agent in this country, charged with the duty of paying the interest upon such bonds, such paying agent shall be the source of information. If such foreign country or foreign corporation has no such agent, then the last bank or collecting agent in this country shall be the source of information. (b) In the case of dividends on the stock of a nonresident foreign corporation, however, the first bank or collecting agent accepting such item for collection shall be the source of information.

3060 **Art. 1078 [Art. 1077]. Ownership Certificates for Foreign Items.**—(*a*) Where bonds of foreign countries, or bonds or stocks of nonresident foreign corporations, are owned by citizens or residents of the United States, individual or fiduciary, or by domestic or resident *foreign* corporations or partnerships, [or by nonresident alien individuals, corporations or partnerships,] ownership certificate *form* 1001 A (revised) shall be executed by the actual owner or by his duly authorized agent when presenting the item for collection, whether such item is a dividend or an interest payment, except in the case of a foreign country or a foreign corporation having a *fiscal* [paying] agent in this country and issuing bonds which contain a tax-free covenant clause. In such a case the *fiscal* [paying] agent is required to withhold the normal tax upon the interest on such bonds and ownership certificate form 1000 (revised),

modified to show the name and address of the fiscal agent, should be used, unless the owner (if so entitled) desires to claim exemption, in which case form 1001 A (revised) should be filed. (*b*) *Where such foreign bonds or stocks are owned by nonresident alien individuals, corporations or partnerships, ownership certificate form* 1001 *A* (*revised*) *shall be used on behalf of such owners by any responsible bank or banker, either foreign or domestic, having knowledge of such ownership. In such a case the bank or banker need not fill in the names of the owners.*

3061 **Art. 1079 [Art. 1078]. Return of Information as to Foreign Items.**—In the case of collections of foreign items, regardless of amount, the original ownership certificates, when duly filed, shall constitute and be treated as returns of information. (a) In the case of dividends, as to which the first bank or collecting agent is the source of information, it shall detach the ownership certificate and indorse on the item the words, "Certificate detached and information furnished," adding its name and address. When foreign items have been indorsed as above prescribed, the certificates shall be forwarded to the Commissioner (Sorting Division) on or before the 20th day of the month following that during which the items were accepted, accompanied by a *return on on form* 1096*A* [letter of transmittal] showing the number of certificates and the aggregate amount of foreign items disclosed thereon. *An annual return on form* 1096 *B shall be forwarded to the Commissioner not later than March* 15 *of each year, on which shall be given a summary of the monthly returns.* (b) In the case of interest items, as to which the paying agent or the last bank or collecting agent in this country is the source of information, the ownership certificate shall accompany the coupon to such agent or source of information, who shall forward the ownership certificate to the Commissioner *in the same manner* as above provided with respect to dividend items. Where ownership certificate form 1000 (revised) is used, a monthly return shall be made on form 1012 (revised) and an annual return on form 1013 (revised), as provided in articles 361–376. *Forms* 1012 (*revised*) *and* 1013 (*revised*), *when so used, should be modified to show the name and address of the paying agent.* The use of substitute certificates is not permitted in the collection of foreign items.

3062 **Art. 1080 [Art. 1079]. Information as to Actual Owner.**—When the person receiving a payment falling within the provisions of the statute for information at the source is not the actual owner of the income received, the name and address of the actual owner shall be furnished upon demand of the individual, corporation or partnership paying the income, and in default of a compliance with such demand the payee becomes liable to the penalties provided. See section 253 of the statute and article 1041.

RETURNS TO BE PUBLIC RECORDS.

3063 **Art. 1091. Inspection of Returns.**—The returns upon which the
403 tax has been determined by the Commissioner, although public
1636 records, are open to inspection only to the extent authorized by the President, except as otherwise expressly provided. Pursuant to a similar provision of the Act of October 3, 1913, the President by an executive order dated July 28, 1914, directed that returns of income should be subject to inspection in accordance with the following regulations prescribed by the Secretary of the Treasury [¶1651]:

A person having the privilege of inspection will not be furnished a copy of the return, but may make a copy or take notes for his own or an authorized use. Beneficiaries of an estate or trust are not entitled as such to an

inspection of returns of income filed by the fiduciary. A receiver of a corporation is entitled to have access to its returns. *See also sections* 326 (*a*) (2) *and* 328 (*c*) *of the statute.*

3064 405 1638 **Art. 1092. Inspection of Returns by State.**—By express exception in the statute the proper officers of a State imposing an income tax are entitled as of right upon the request of its governor to have access to the returns of income of any corporation or to an abstract thereof showing its name and income. Upon written application by the governor of a State as prescribed in paragraph 7 of article 1091, except that the application may be made directly to the Commissioner instead of to the Secretary, the Commissioner will set a convenient time for inspection of the returns (or an abstract thereof as he may determine) of corporations organized or doing business in such State. The authority to inspect returns granted to officers of a State includes authority to inspect lists furnished to supplement and become a part of the returns.

3065 406 1639 **Art. 1093. Inspection of Returns by Stockholder.**—By express exception in the statute a bona fide stockholder of record owning one per cent of the outstanding stock of a corporation is entitled as of right to examine the returns of income of such corporation and its subsidiaries. A stockholder desiring the privilege of inspection shall apply in writing to the Commissioner, specifying his address, the name of the corporation, its outstanding capital stock, the number of shares owned by him, the date of their acquisition and whether or not he has the beneficial as well as the record title to such shares, and in other respects complying with the requirements of paragraph 4 of article 1091. A stockholder who has acquired his shares for the purpose of inspection of the income returns of the corporation is not a bona fide stockholder.

3066 407 1640 **Art. 1094. Penalties for Disclosure of Returns.**—A stockholder who examines the return of a corporation and reveals without express authority of law any particulars of its income statement is guilty of a misdemeanor and liable to fine and imprisonment. Section 3167 of the Revised Statutes, as amended by section 1317 of the Revenue Act of 1918, also provides [¶441 and ¶2645]:

An internal revenue officer discovering in the course of his duty information leading him to suspect a possible violation of any law with the enforcement of which he is not directly concerned should immediately report the matter to the Commissioner, who is authorized to communicate with the proper department involved.

PUBLICATION OF STATISTICS

3067 409 1641 **Art. 1101. Statistics of Income.**—The Commissioner will publish annually a volume of statistics of income, showing, among other things, the distribution of incomes between corporations and individuals and by States, by classes and by occupations.

COLLECTION OF FOREIGN ITEMS

3068 410 1378 **Art. 1111. License to Collect Foreign Items.**—Banks or agents collecting foreign items, as defined in article 1077, and required by article 1079 to make returns of information with respect thereto, must obtain a license from the Commissioner to engage in such

business. Application form 1017 for such license may be procured from collectors. The license is issued without cost on form 1010. Foreign items shall not be accepted for collection by any bank or collecting agent so licensed unless properly indorsed or accompanied by proper ownership certificates giving all the information called for by such certificate. See section 256 and articles 1077-1079.

CITIZENS OF UNITED STATES POSSESSIONS

3069 413 509 **Art. 1121. Status of Citizen of United States Possession.**—A citizen of a possession of the United States, who is not otherwise a citizen or a resident of the United States, including only the States, the Territories of Alaska and Hawaii, and the District of Columbia, is treated for the purpose of the tax as if he were a nonresident alien individual. See articles 91–93, 271, 306, 307, 311, 316 *and* 404. His income from sources within the United States is subject to withholding. See section 221 and articles 361-376.

PORTO RICO AND PHILIPPINE ISLANDS

3070 415 511 **Art. 1131. Income Tax in Porto Rico and Philippine Islands.**—In Porto Rico and the Philippine Islands the Revenue Act of 1916, as amended, is in force and the Revenue Act of 1918 is not. See also section 1400 of the statute. No credit against net income is allowed individuals and no deduction from gross income is allowed corporations with respect to dividends received from a foreign corporation (foreign with respect to the United States) taxed in Porto Rico or the Philippines, but having no income from sources within the United States.

3071 **Art. 1132. Taxation of Individuals between United States and Porto Rico and Philippine Islands.**—(*a*) A citizen of the United States who resides in Porto Rico, and a citizen of Porto Rico who resides in in United States, are taxed in both places, but the income tax in the United States is credited with the amount of any income, war profits and excess profits taxes paid in Porto Rico. See section 222 of the statute and articles 381-384. (*b*) A resident of the United States, who is not a citizen of Porto Rico, is taxable in Porto Rico as a nonresident alien individual on any income derived from sources within Porto Rico, but the income tax in the United States is credited with the tax paid in Porto Rico. (*c*) A resident of Porto Rico, who is not a citizen of the United States, is taxable in the United States as a nonresident alien individual on any income derived from sources within the United States, and receives no credit. See also section 260 [of the statute] and article 1121. The same principles apply in the case of the Philippine Islands.

3072 **Art. 1133. Taxation of Corporations between United States and Porto Rico and Philippine Islands.**—(*a*) A United States corporation which derives income from sources within Porto Rico, (*b*) a Porto Rico corporation which derives income from sources within the United States, and (*c*) a corporation of a foreign country which derives income both from sources within Porto Rico and from sources within the United States, are all taxed in both places. In the case of the United States corporation the income, war profits and excess profits taxes in the United States are credited with the amount of any income, war profits and excess profits taxes paid in Porto Rico. In the case of the Porto Rico corporation there is no such credit.

See section 238 of the statute *and article* 611. The corporation of the foreign country deriving income from both places is subject to no double taxation so far as the United States and Porto Rico are concerned. For the purpose of withholding a Porto Rico corporation is a foreign corporation. See section 237 [of the statute] *and article* 601. The same principles apply in the case of the Philippine Islands.

END OF PART III.

PART IV.

[OF REGULATIONS 45.]

DEFINITIONS AND GENERAL PROVISIONS.

GENERAL DEFINITIONS.

3073 2 762 1686 **Art. 1501. Person.**—The statute recognizes three chief classes of persons, to wit, individuals, partnerships and corporations. Corporations include associations, joint-stock companies and insurance companies, but not partnerships properly so-called. A taxpayer is any person, trust or estate subject to tax.

3074 3 1685 **Art. 1502. Association.**—Associations and joint-stock companies include associations, common law trusts and organizations by whatever name known, which *act* [carry on] or do business in an organized capacity, whether created under and pursuant to State laws, [trust] agreements, declarations of trust, or otherwise, the net income of which, if any, is distributed or distributable among the members or shareholders on the basis of the capital stock which each holds or, where there is no capital stock, on the basis of the proportionate share or capital which each has or has invested in the business or property of the organization.

3075 **Art. 1503. Association Distinguished from Partnership.**—An organization the membership interests in which are transferable without the consent of all the members, however the transfer may be otherwise restricted, and the business of which is conducted by trustees or directors and officers without the active participation of all the members as such, is an association and not a partnership. A partnership bank conducted like a corporation and so organized that the interests of its members may be transferred without the consent of the other members is a joint-stock company or association within the meaning of the statute. A partnership bank the interests of whose members can not be so transferred is a partnership.

3076 **Art. 1504. Association Distinguished from Trust.**—*Where trustees hold real estate subject to a lease and collect the rents, doing no business other than distributing the income less taxes and similar expenses to the holders of their receipt certificates, who have no control except the right of filling a vacancy among the trustees and of consenting to a modification of the terms of the trust, no association exists and the cestuis que trust are liable to tax as beneficiaries of a trust the income of which is to be distributed periodically, whether or not at regular intervals. But in such a trust if the trustees pursuant to the terms thereof have the right to hold the income for future distribution, the net income is taxed to the trustees instead of to the beneficiaries. See section* 219 *of the statute and*

articles 341–346. *If, however, the cestuis que trust have a voice in the conduct of the business of the trust, whether through the right periodically to elect trustees or otherwise, the trust is an association within the meaning of the statute.* [A Massachusetts trust in which the trustees' powers and functions as defined by the instrument under which they act resemble the powers and functions ordinarily exercised by the managers of an organization so constituted as to be of itself a recipient of taxable income independently of the individual beneficially interested in the property from which it is derived, and an organization according to whose constitution individuals beneficially interested in various proportions in the same property commit its control and management for profit to trustees free from their own immediate control or interference, are associations. Where, however, the interest of each beneficiary in the income of trust property, as received, belongs to him as his separate, individual property, and the trustee is required to make prompt distribution of it and is not responsible for the operation of the property from which it is derived, the trustee and cestuis que trust do not constitute an association.]

3077 **Art. 1505. Limited Partnership as Partnership.**—So-called limited partnerships of the type authorized by the statutes of New York and most of the States are partnerships and not corporations within the meaning of the statute. Such limited partnerships, which can not limit the liability of the general partners, although the special partners enjoy limited liability so long as they observe the statutory conditions, which are dissolved by the death or attempted transfer of the interest of a general partner, and which can not take real estate or sue in the partnership name, are so like common law partnerships as to render impracticable any differentiation in their treatment for tax purposes. Michigan and Illinois limited partnerships are partnerships. A California special partnership is a partnership.

3078 **Art. 1506. Limited Partnership as Corporation.**—On the other hand, limited partnerships of the type of partnerships with limited liability or partnership associations authorized by the statutes of Pennsylvania and of a few other States are only nominally partnerships. Such so-called limited partnerships, offering opportunity for limiting the liability of all the members, providing for the transferability of partnership shares, and capable of holding real estate and bringing suit in the common name, are more truly corporations than partnerships and must make returns of income and pay the tax as corporations. The income received by the members out of the earnings of such limited partnerships will be treated in their personal returns in the same manner as distributions on the stock of corporations. In all doubtful cases limited partnerships will be treated as corporations unless they submit satisfactory proof that they are not in effect so organized. Michigan and Virginia partnership associations are corporations. Such a corporation may or may not be a personal service corporation. See sections 200 and 218 of the statute and articles 1523-1532.

3079 **Art. 1507. Joint Ownership and Joint Adventure.**—Joint investment in and ownership of real and personal property not used in the operation of any trade or business and not covered by any partnership agreement does not constitute a partnership. Co-owners of oil lands engaged in the joint enterprise of developing the property through a common agent are not necessarily partners. In the absence of special facts affirmatively showing an association or partnership, where a vessel is owned by

several individuals and operated by a managing owner or agent for the account of all, the relation does not constitute either a joint-stock association or a partnership. The participation of two United States corporations in a joint enterprise or adventure does not constitute them partners.

3079a **Art. 1508. Insurance Company.**—*Insurance companies include both stock and mutual companies, as well as mutual benefit insurance companies. A voluntary unincorporated association of employees formed for the purpose of relieving sick and aged members and the dependents of deceased members is an insurance company, whether the fund for such purpose is created wholly by membership dues or partly by contributions from the employer. But a corporation which merely sets aside a fund for the insurance of its employees is not required to file a separate return for such fund if the income and disbursements therefrom are included in the corporation's own return. See sections* 231, 233, 234 *and* 239 *of the statute and articles* 521, 548, 549, 568–572, 623 *and* 870.

3080 4-6 2280 2331 **Art. 1509 [Art. 1508]. Domestic and Foreign Persons.**—A domestic corporation or partnership is one organized or created in the United States, including only the States, the Territories of Alaska and Hawaii, and the District of Columbia, and a foreign corporation or partnership is one organized or created outside the United States as so defined. The nationality or residence of members of a partnership does not affect its status. A partnership created by articles entered into in San Francisco between residents of the United States and residents of China is a domestic partnership. A foreign corporation engaged in trade or business within the United States or having an office or place of business therein is sometimes referred to in the regulations as a resident foreign corporation and a foreign corporation not engaged in trade or business within the United States and not having any office or place of business therein as a nonresident foreign corporation. See also articles 4 and 312-315.

3080a 1313 **Art. 1510. Government Contract.**—*Government contracts may include (a) a contract with the United States, (b) a contract with an agency of the United States, (c) a contract with an agency of such agency, and (d) a subcontract with a contractor under any such contract; provided in every case the contract or subcontract is for the benefit of the United States. Unenforceable contracts subsequently ratified are treated as though made when originally executed. The Commissioner may require any contractor to file with him copies of his Government contracts entered into on or after April 6,* 1917, *and shall have access to the information in the possession of the Government relating to such contracts. See section* 1408 *of the statute. The realization by a corporation of income from a Government contract may affect its status under the consolidated returns provision and the amount of its war profits and excess profits tax. See sections* 240, 301 (*c*), 311 (*d*), 327 (*d*) *and* 200 *and articles* 635, 714, 719, 784, *and* 1524. *The agreements for the operation of transportation systems while under federal control and for the just compensation of their owners made pursuant to the act of March* 21, 1918, *are not Government contracts within the meaning of this article. See sections* 230 *and* 301 (*e*) *and article* 504.

DEFINITIONS.

3081 21 1169 **Art. 1521. Fiduciary.**—"Fiduciary" is a term which applies to all persons that occupy positions of peculiar confidence toward others, such as trustees, executors and administrators, and a fiduciary for income tax purposes is a person who holds in trust an estate to

which another has the beneficial title or in which another has a beneficial interest, or receives and controls income of another as in the case of receivers. A committee of the property of an incompetent person is a fiduciary. See sections 219 and 225 of the statute and articles 341-344 and 421-425.

3082 Art. 1522. **Fiduciary Distinguished from Agent.**—There may be a fiduciary relationship between an agent and a principal, but the word "agent" does not denote a fiduciary. A fiduciary relationship can not be created by a power of attorney. An agent having entire charge of property, with authority to effect and execute leases with tenants entirely on his own responsibility and without consulting his principal, merely turning over the net profits from the property periodically to his principal by virtue of authority conferred upon him by a power of attorney, is not a fiduciary within the meaning of the statute. In cases where no legal trust has been created in the estate controlled by the agent and attorney the liability to make a return rests with the principal.

3083 Art. 1523. **Personal Service Corporation.**—The term "personal
23 service corporation" means a corporation, not expressly excluded,
1308 the income of which is derived from a profession or business (*a*) which consists principally of rendering personal service, (*b*) the earnings of which are to be ascribed primarily to the activities of the principal owners or stockholders, and (*c*) in which the employment of capital is not necessary or is only incidental. No definite and conclusive tests can be prescribed by which it can be finally determined in advance of an examination of the corporation's return whether or not it is a personal service corporation. In the following articles are laid down the general principles under which such determination will be made. *See also section* 303 *of the statute and articles* 741-743.

3084 Art. 1524. **Personal Service Corporation: Certain Corporations Excluded.**—The following classes of corporations are expressly excluded from classification as personal service corporations: (*a*) foreign corporations; (*b*) corporations 50 per cent or more of whose gross income consists of gains, profits or income derived from trading as a principal; and (*c*) corporations 50 per cent or more of whose gross income consists of gains, profits, commissions or other income derived from a Government contract or contracts made between April 6, 1917, and November 11, 1918, inclusive. *See article* 1510. *A corporation is not a personal service corporation merely because less than* 50 *per cent of its gross income was derived from trading as a principal or from Government contracts. A corporation can not be considered a personal service corporation when another corporation owns or controls substantially all of its stock, or when substantially all of its stock and of the stock of another corporation (not itself a personal service corporation) forming part of the same business enterprise is owned or controlled by the same interests. See section* 240 *of the statute and articles* 631–638.

3085 Art. 1525. **Personal Services Rendered by Personal Service Corporation.**—In order that a corporation may be deemed to be a personal service corporation its earnings must be derived principally from compensation for personal services rendered by the corporation to the persons with whom it does business. Merchandising or trading either directly or indirectly in commodities or the services of others is not rendering personal service. Conducting an auction, agency, brokerage or commission business strictly on the basis of a fee or commission is rendering

personal service. If, however, the corporation assumes any such risks as those of market fluctuation, bad debts, failure to accept shipments, etc., or if it guarantees the accounts of the purchaser or is in any way responsible to the seller for the payment of the purchase price, the transaction is one of merchandising or trading, and this is true even though the goods are shipped directly from the producer to the consumer and are never actually in the possession of the corporation. The fact that earnings of the corporation are termed commissions or fees is not controlling. The fact that a commission or fee is based on a difference in the prices at which the seller sells and the buyer buys raises a presumption that the transaction is one of merchandising or trading, and it will be so considered in the absence of satisfactory evidence to the contrary.

3086 **Art. 1526. Personal Services Rendered by Personal Service Corporation: More than One Business.**—It frequently happens that corporations are engaged in two or more professions or businesses which are more or less related, one of which does not consist of rendering personal service. Thus an engineering concern may also engage in contracting, which amounts to trading in materials and labor, a brokerage concern may guarantee some of its accounts, a photographer may sell pictures, frames, art goods and supplies or a dealer in a commodity may furnish expert advice or services with respect to its installation, use, etc. In such case the corporation is not a personal service corporation unless the non-personal service element is negligible or merely incidental and no appreciable part of its earnings are to be ascribed to such sources. See also section 303 of the statute *and articles* 741-743.

3087 **Art. 1527. Activities of Stockholders of Personal Service Corporation.**—In determining whether a corporation is a personal service corporation, no weight can be given to the fact that it renders personal services unless (*a*) the principal owners or stockholders are regularly engaged in the active conduct of its affairs and are engaged in such a manner that the earnings are to be ascribed primarily to their activities, and (*b*) its affairs are conducted principally by such owners or stockholders.

3088 **Art. 1528. Activities of Stockholders of Personal Service Corporation: Conduct of Affairs.**—Where the principal owners or stockholders do not render the principal part of the services, but merely supervise or direct a force of employees, the corporation is not a personal service corporation. If employees contribute substantially to the services rendered by a corporation, it is not a personal service corporation unless in every case in which services are so rendered the value of and the compensation charged for such services are to be attributed primarily to the experience or skill of the principal owners or stockholders and such fact is evidenced in some definite manner in the normal course of the profession or business. The fact that the principal owners or stockholders give personal attention or render valuable services to the corporation as a result of which its earnings are greater than those of a corporation engaged in a like or similar business, the principal owners or stockholders of which do not devote personal attention to the management or supervision of its affairs, does not of itself constitute the corporation a personal service corporation.

3089 **Art. 1529. Activities of Stockholders of Personal Service Corporation: Stock Interest Required.**—No definite percentage of stock or interest in the corporation which must be held by those engaged in the

active conduct of its affairs in order that they may be deemed to be the principal owners or stockholders can be prescribed as a conclusive test, as other facts may affect any presumption so established. No corporation or its owners or stockholders shall, however, make a return in the first instance on the basis of its being a personal service corporation unless at least 80 per cent of its stock is held by those regularly engaged in the active conduct of its affairs.

3090 **Art. 1530. Activities of Stockholders of Personal Service Corporation: Change in Ownership.**—The fact that the owners or stockholders of the corporation may change during the course of the taxable year does not take a corporation which is normally in the personal service class out of that class. Frequent changes in the ownership of any substantial interest or number of shares are [is], however, evidence bearing on the question as to whether the principal owners or stockholders are actively engaged in the conduct of the affairs of the corporation. The incapacity, retirement or death of a principal owner or stockholder who has been actively engaged in the conduct of its affairs will not be deemed to make any change in the status of the corporation during a reasonable time thereafter.

3091 **Art. 1531. Capital of Personal Service Corporation.**—In determining whether a corporation is a personal service corporation, no weight can be given to the fact that the invested capital of the corporation *for the purpose of the war profits and excess profits tax* [under Title III of the statute] or the actual investment of the principal owners or stockholders is comparatively small. The test established by the statute with respect to capital is entirely different. That test is the nature of the profession or business as indicated (*a*) by the kind of services it renders and (*b*) the extent to which capital is required to carry on such profession or business. If the use of capital is necessary or more than incidental, capital is a material income-producing factor and the corporation is not a personal service corporation. No corporation is a personal service corporation if it carries on business of a kind which ordinarily requires the use of capital, irrespective of whether the owners or stockholders have actually invested a substantial amount of capital.

3092 **Art. 1532. Capital of Personal Service Corporation: Inference from Use.**—The term "capital" as used in section 200 of the statute and in articles 1523-1532 means not only capital actually invested by the owners or stockholders, but also capital secured in other ways. Thus if capital is borrowed either directly as shown by bonds, debentures, certificates of indebtedness, notes, bills payable or other paper, or indirectly as shown by accounts payable or other forms of credit, or if the business of the corporation is in any way financed by or through any of the owners or stockholders, these facts will be deemed evidence that the use of capital is necessary. If a substantial amount of capital is used to finance or carry the accounts of clients or customers, it will be inferred that because of competition or other reasons such practice is necessary in order to secure or hold business which otherwise would be lost, and that the corporation is not a personal service corporation. If a corporation engaged in an agency, brokerage or commission business regularly employs a substantial amount of capital to lend to principals, to buy and carry goods on its own account, or to buy and carry odd lots in order that it may render more satisfactory service to its principals or customers, it is not a personal service corporation. In general the larger the amount of the capital actually used the stronger is the evidence that capital is necessary and is a material income-

producing factor and that the corporation is not a personal service corporation.

3093 Art. 1533. **"Taxable Year," "Withholding Agent" and "Paid."**—
18 The taxable year is the time unit for the purpose of the tax. See
22 section 212 of the statute and article 22. A withholding agent
28 may be a corporation with bonds outstanding, a trustee under a corporate mortgage, or any corporation, partnership or private individual. See section 221 and articles 361-376. "Paid" is to be construed in each instance in the light of the method used in computing net income, whether on an accrual or a receipt basis. See article 23.

DIVIDENDS.

3094 Art. 1541. **Dividends.**—Dividends for the purpose of the statute
29 comprise any distribution in the ordinary course of business, even
770 though extraordinary in amount, made by a domestic or foreign corporation to its shareholders out of its earnings or profits accumulated since February 28, 1913, and in the case [only] of a personal service corporation prior to January 1, 1918. [For the purpose of determining the character of a distribution, any distribution during the first sixty days of a taxable year shall be deemed to have been made, so far as possible, from earnings or profits accumulated during preceding taxable years, but since February 28, 1913, and, in the case of a personal service corporation, from the most recently accumulated earnings or profits of prior years. Any distribution during the remainder of the taxable year shall be deemed to have been made, so far as possible, from earnings or profits accumulated during such year up to the date of distribution, after, however, setting aside a proper reserve for the payment of accrued income, war profits and excess profits taxes. (*In connection with above matter, cut out here, see* ¶3094*a below.*)] The mere declaration of a dividend is not a distribution. Dividends are income and are taxed at the rates for the year in which paid, regardless of when the earnings or profits out of which they were paid were accumulated *As to certain stock dividends see, however, article* 1546 [But see article 1545.] Although interest on State bonds and certain other obligations is not taxable when received by a corporation, upon amalgamation with the other funds of the corporation such income loses its identity and when distributed to stockholders in dividends is taxable to the same extent as other dividends. *See further articles* 54 *and* 858.

3094a Art. 1542. **Presumption as to Source of Distribution.**—*In the case of a corporation other than a personal service corporation any distribution to stockholders is deemed to have been made so far as possible* (*a*) *from earnings or profits*; (*b*) *during the year* 1918 *or thereafter from earnings or profits accumulated since February* 28, 1913; (*c*), *if during the first sixty days of a taxable year, from earnings or profits accumulated during preceding taxable years*; *and* (*d*), *if during the remainder of a taxable year after the first sixty days, from earnings or profits accumulated during the taxable year up to the date of distribution. The presumption contained in clauses* (*c*) *and* (*d*) *affects the determination of invested capital for the purpose of the war profits and excess profits tax, but has no effect upon the rates at which dividends paid in* 1918 *and subsequent years are taxed. In ascertaining whether or not a distribution was made out of earnings or profits of the taxable year there should first be set aside a proper reserve for the payment of accrued income and war profits and excess profits taxes. See article* 857. *In the case of a personal service corporation any*

distribution is deemed to have been made so far as possible (a) from earnings or profits; (b) during the year 1918 *or thereafter from earnings or profits accumulated since February* 28, 1913; *(c) if during the first sixty days of a taxable year, from the most recently accumulated earnings or profits of preceding taxable years; and (d) if during the remainder of the taxable year after the first sixty days, from earnings or profits accumulated during the taxable year up to the date of distribution.*

3095 **Art. 1543 [Art. 1542]. Distributions which are not Dividends.**—A distribution by a corporation out of earnings or profits accumulated prior to March 1, 1913, or out of any assets except earnings or profits accumulated since February 28, 1913, is not a dividend within the meaning of the statute. A distribution by a personal service corporation out of earnings or profits accumulated since December 31, 1917, is not a dividend. A distribution out of earnings or profits accumulated before March 1, 1913, is free from tax as a dividend; out of assets other than earnings or profits accumulated since February 28, 1913, may or may not be free from tax, according as each stockholder receives more or less than he paid for his stock or its fair market value as of March 1, 1913; and, in the case of a personal service corporation, out of earnings or profits accumulated since December 31, 1917, is taxed to the stockholders as though they were partners. See section 218 of the statute and articles 328–335. *In determining whether a distribution is made out of earnings or profits accumulated after or before March* 1, 1913, *due consideration must be given to the facts and mere book entries increasing or decreasing the surplus will not be conclusive.*

3096 **Art. 1544 [Art. 1543]. Dividends Paid in Property.**—Dividends paid
30 in securities or other property (other than its own stock), in which
771 the earnings of a corporation have been invested, are income to the recipients to the amount of the fair market value of such property when receivable by the stockholders. A dividend paid in stock of another corporation is not a stock dividend. Where a corporation declares a dividend payable in stock of another corporation, setting aside the stock to be so distributed and notifying the stockholders of its action, the income arising to the recipients of such stock is its fair market value at the time the dividend becomes payable. *See article* 53. Scrip dividends are subject to tax in the year in which the warrants are issued.

3097 **Art. 1545 [Art. 1544]. Stock Dividends.**—A dividend paid in stock of
36 the corporation is income to the amount of the earnings or profits
811 distributed, as shown by the transfer of surplus to capital account on the books of the corporation, usually equal to the par value of the stock distributed. But stock distributions made out of surplus other than earnings or profits accumulated since February 28, 1913, *when there are no such earnings or profits*, are not dividends within the meaning of the statute and are free from tax as dividends. Stock dividends paid from earnings or profits accumulated after February 28, 1913, received by a fiduciary and retained as an accretion to the estate under the terms of the will or trust, are income to the estate.

3098 **Art. 1546 [Art. 1545]. Stock Dividends of 1918.**—*By a special exce-*
38 *tion to the general rule* any stock dividend received by a taxpayer
[831 between January 1 and November 1, 1918, or declared and credited to a stockholder during such period and received by him before *March* 27, 1919, [the expiration of thirty days after the passage of the statute,]

is deemed to have been paid from the most recently accumulated earnings or profits and shall be taxed to the recipient at the rates prescribed for the years in which the corporation accumulated the earnings or profits so distributed. Thus, such a stock dividend will be deemed to have been paid from the earnings of 1918 (unless paid during the first sixty days of 1918), and the recipient, if an individual, will be liable to any surtax at the rates for the year 1918, unless at the time such dividend was paid or credited the current earnings up to that time were not sufficient to cover the distribution, in which case the excess over the earnings of the taxable year will be deemed to have been paid from the most recently accumulated surplus of prior years and will be taxed at the rate or rates for the year or years in which earned. A corporation declaring and paying such a stock dividend out of earnings accumulated over a period of years should make a record in its books of the amount of the dividend paid out of each year's undistributed profits and advise the stockholders accordingly. See section 206 of the statute and article 1642.

3099 **Art. 1547 [Art. 1546]. Sale of Stock Received as Dividend.**—As stock dividends were taxable income under the Revenue Act of 1916, as well as the present statute, but were not under the Act of October 3, 1913, different considerations may apply to the sale of stock received as a dividend before 1916 and stock so received thereafter. *See article* 39. For the purpose of ascertaining the gain or loss derived from the sale of stock of a corporation received as a dividend, or from the sale of the stock in respect of which such dividend was paid, the cost (used to include also, where required, fair market price or value as of March 1, 1913) of such stock is to be determined in accordance with the following rules:

(1) In the case of stock (*a*) received as a dividend in 1913, 1914 or 1915 out of surplus however created, or (*b*) received as a dividend in 1916 or subsequent years out of surplus other than earnings or profits accumulated since February 28, 1913, the cost of each share of new stock is the quotient of the cost of the old stock divided by the number of old and new shares added together.

(2) In the case of the stock in respect of which any stock dividend was paid as described under (1), the cost of each share of old stock is similarly the quotient of the cost of the old stock divided by the number of old and new shares.

(3) In the case of stock received as a dividend in 1916 or subsequent years out of earnings or profits accumulated since February 28, 1913, the cost of each share *of new stock is the quotient of the sum of* (*a*) *the cost of the old stock plus* (*b*) *the valuation at which the new stock was returnable as income* (*as shown by the transfer of surplus to capital account on the books of the corporation, usually its par value*), *divided by the number of old and new shares added together* [is the valuation at which it was returnable as income, as shown by the transfer of surplus to capital account on the books of the corporation, usually its par value].

(4) In the case of the stock in respect of which any stock dividend was paid as described under (3), the cost of each share *of old stock is similarly the quotient of the sum of* (*a*) *the cost of the old stock plus* (*b*) *the valuation at which the new stock was returnable as income, divided by the number of old and new shares* [is its original cost, regardless of any stock dividend].

3100 **Art. 1548 [Art. 1547]. Distribution in Liquidation.**—So-called liqui-
41 dation or dissolution dividends are not dividends within the meaning
828 of the statute, and amounts so distributed, whether or not including

any surplus earned since February 28, 1913, are to be regarded as payments for the stock of the dissolved corporation. Any excess so received over the cost of his stock to the stockholder, or *over* its fair market [price or] value as of March 1, 1913, if acquired prior thereto, is a taxable profit. A distribution in liquidation of the assets and business of a corporation, which is a return to the stockholder of the value of his stock upon a surrender of his interest in the corporation, is distinguishable from a dividend paid by a going corporation out of current earnings or accumulated surplus when declared by the directors in their discretion, which is in the nature of a recurrent return upon the stock.

3101 **Art. 1549. Distribution from Depletion or Depreciation Reserve.**—A reserve set up out of gross income by a corporation and maintained for the purpose of making good any loss of capital assets on account of depletion or depreciation is not a part of its surplus out of which ordinary dividends may be paid. A distribution made from such a reserve will be considered a liquidating dividend and will constitute taxable income to a stockholder only to the extent that the amount so received is in excess of the cost or fair market value as of March 1, 1913, of his shares of stock. No distribution, however, will be deemed to have been made from such a reserve except to the extent that the amount paid exceeds the surplus and undivided profits of the corporation. In general, any distribution made by a corporation other than out of earnings or profits accumulated since February 28, 1913, is to be regarded as a return to the stockholder of part of the capital represented *by* [in] his shares of stock, and upon a subsequent sale of such stock his profit will be the excess of the selling price over the cost of the stock or its fair market value as of March 1, 1913, after applying on such cost or value the amount of any such capital distribution.

BASIS FOR DETERMINING GAIN OR LOSS.

3102 **Art. 1561. Basis for Determining Gain or Loss from Sale.**—For
43 the purpose of ascertaining the gain or loss from the sale or exchange
1854 of property the basis is (*a*) its fair market price or value as of March 1, 1913, if acquired prior thereto, or (*b*), if acquired on or after that date, its cost or its approved inventory value. *In both cases proper adjustment must be made for any depreciation or depletion sustained.* What the fair-market price or value of property was on March 1, 1913, is a question of fact to be established by any evidence which will reasonably and adequately make it appear. *As to inventories see section* 203 *of the statute and articles* 1581–1585. *The fair market value as of March* 1, 1913, *has no bearing on the determination of the invested capital of a corporation for the purpose of the war profits and excess profits tax. See section* 326 *and article* 831.

3103 **Art. 1562. Sale of Property Acquired by Gift or Bequest.**—In the case of property acquired by gift, bequest, devise or descent the basis for computing gain or loss on a sale is the fair market price or value of the property at the date of acquisition or as of March 1, 1913, if acquired prior thereto. For the purpose of determining the profit *or loss* from the sale of property acquired by bequest, devise or descent since February 28, 1913, its value as appraised for the purpose of the federal estate tax, or in the case of estates not subject to that tax its value as appraised in the State court for the purpose of State inheritance taxes [or otherwise], should be deemed to be its fair market value when acquired. See section 213 (*b*) (3) of the statute *and article* 73.

3104 Art. 1563. **Exchanges of Property.**—Gain or loss arising from the
46 acquisition and subsequent disposition of property is realized when
1909 as the result of a transaction between the owner and another person the property is converted into cash or into property (*a*) that is essentially different from the property disposed of and (*b*) that has a market value. In other words, both (*a*) a change in substance and not merely in form, and (*b*) a change into the equivalent of cash, are required to complete or close a transaction from which income may be realized. By way of illustration, if a man owning ten shares of listed stock exchanges his stock certificate for a voting trust certificate, no income is realized, because the conversion is merely in form; or if he exchanges his stock for stock in a small, closely held corporation, no income is realized if the new stock has no market value, although the conversion is more than formal; but if he exchanges his stock for a liberty bond, income may be realized, because the conversion is into independent property having a market value. *The property received in exchange may be real estate, personal property, or a chose in action.* The exchange of a so-called convertible bond for stock pursuant to such a privilege granted in the bond will produce income if the stock received in exchange has a fair market value in excess of the cost of fair market value as of March 1, 1913, of the bond.

3105 Art. 1564. **Determination of Gain or Loss from Exchange of Property.**—(*a*) The amount of income derived in the case of an exchange of property, as of stock for a bond, is the excess of the fair market value at the time of exchange of the bond received in exchange over the original cost of the stock exchanged for it, or over the fair market price or value of such stock as of March 1, 1913, if acquired before that date. The amount of income derived from a subsequent sale of the bond for cash is the excess of the amount so received over the fair market value of such bond when acquired in exchange for the stock. (*b*) On the other hand, if the property received in exchange is substantially the same property or has no market value, then no gain or loss is realized, but the new property is to be regarded as substituted for the old and upon a sale of the new property the amount of income derived is the excess of the amount so received over the cost or fair market value as of March 1, 1913, of the old. [But see article 1566.]

3106 Art. 1565. **Exchange for Different Kinds of Property.**—(*a*) If property is exchanged for two different kinds of property, such as bonds and stock, the bonds having a market value and the stock none, the value of the bonds is to be compared with the cost or fair market value as of March 1, 1913, of the original property, as the case may be. If the market value of the bonds is less than such cost or value, the difference represents the cost of the stock. If the market value of the bonds is greater than such cost or value, the difference is taxable income at the time of the exchange and whenever sold the entire proceeds of the stock will be taxable. (*b*) If property is exchanged for two different kinds of property, such as bonds and stock, neither having a market value, the cost or fair market value as of March 1, 1913, of the original property should be apportioned, if possible, between the bonds and stock for the purpose of determining gain or loss on subsequent sales. If no fair apportionment is practicable, no profit on any subsequent sale of any part of the bonds or stock is realized until out of the proceeds of sales shall have been recovered the entire cost or fair market value as of March 1, 1913, of the original property.

3106a Art. 1566. **Exchange of Property and Stock.**—(*a*) *Where property is transferred to a corporation in exchange for its stock, if the previous*

owner of the property receives 50 *per cent or more of the stock of the corporation, so that an interest of* 50 *per cent or more in such property remains in him, then no gain or loss is realized by such owner from the transaction. For the purpose of ascertaining the gain or loss from the subsequent sale by the stockholder of any stock so received for such property the stock is to be considered as substituted for the property and the cost of the property or (if acquired prior thereto) its fair market value as of March* 1, 1913, *is the basis for determining the amount of such gain or loss. For the purpose of ascertaining the gain or loss from the subsequent sale by the corporation of any such property the cost of the property to the former owner or (if acquired prior thereto by him) its fair market value as of March* 1, 1913, *is the basis for determining the amount of such gain or loss. As to the invested capital of the corporation, see section* 331 *of the statute and article* 941. *"Owner" includes "owners". This article applies to the incorporation of a business previously conducted by an individual or by a partnership. (b) If, however, the exchange of property and stock involves less than* 50 *per cent of the stock of the corporation, the exchange constitutes a closed transaction, and the former owner of the property realizes a gain or loss if the stock has a market value and such market value is greater or less than the cost or (if acquired prior thereto) the fair market value as of March* 1, 1913, *of the property given in exchange. (c) Where a corporation dissolves and distributes its assets in kind and not in cash no taxable income is received from the transaction by its stockholders, because they merely exchange an indirect interest for a direct interest in the same property. As to cash distributions, see article* 1548. *For the purpose of ascertaining the gain or loss from the subsequent sale of any property so received upon dissoltion see article* 1564 *(b). See also articles* 542 *and* 547.

3107 47 1910 Art. 1567 [Art. 1566]. Exchange of Stock for other Stock of no Greater Par Value.—In general, where two (*or more*) corporations unite their properties by either (*a*) the dissolution of corporation B and the sale of its assets to corporation A, or (*b*) the sale of its property by B to A and the dissolution of B, or (*c*) the sale of the stock of B to A and the dissolution of B, or (*d*) the merger of B into A, or (*e*) the consolidation of the corporations, no taxable income is received from the transaction by A or B or the stockholders of either, provided the sole consideration received by B and its stockholders in (*a*), (*b*), (*c*) and (*d*) is stock or securities of A, and by A and B and their stockholders in (*e*) is stock or securities of the consolidated corporation, in any case of no greater aggregate par or face value than the old stock and securities surrendered. *If the stock so received has no nominal or par value the limitation on aggregate par value is inapplicable.* [For the purpose of ascertaining the gain derived or loss sustained from the subsequent sale of any stock of A or of the consolidated corporation so received, the original cost to the taxpayer or the fair market price or value as of March 1, 1913, of the stock of B or A in respect of which the new stock was issued, less any untaxed distribution made to the taxpayer by A out of the former capital or surplus of B, or by the consolidated corporation out of the former capital or surplus of A or B, is the basis for determining the amount of such gain or loss.]

3107a Art. 1568. Determination of Gain or Loss from Subsequent Sale.—*The new stock and securities received as described in the preceding article take the place of the old stock and securities. For the purpose, therefore, of ascertaining the gain derived or loss sustained from the subsequent sale of any stock of A or of the consolidated corporation so received, the original cost to the taxpayer or the fair market value as of March* 1, 1913, *of the stock of B or A in respect of which the new stock was issued, less any untaxed distribution made to*

the taxpayer by A out of the former capital or surplus of B, or by the consolidated corporation out of the former capital or surplus of A or B, is the basis for determining the amount of such gain or loss. Similarly, the cost after reorganization, merger or consolidation of the assets of A or of the consolidated corporation is the sum of the cost (or the fair market value as of March 1, 1913) *of the assets of A and of B for the purpose of ascertaining the gain or loss upon a subsequent sale. The new invested capital of A or of the consolidated corporation is to be determined as if A and B were rendering a consolidated return as affiliated corporations. See sections* 240 *and* 326 *of the statute and articles* 631–638 *and* 864–869.

3108 Art. 1569 [Art. 1567]. Exchange Stock for other Stock of Greater Par
49 Value.—If in the case of any reorganization, merger or consolidation
1912 the aggregate par or face value of the new stock or securities received is in excess of the aggregate par or face value of the stock and securities exchanged, income will be realized from the transaction by the recipients of the new stock or securities to an amount limited by (*a*) the excess of the par or face value of the new stock or securities over the par or face value of the old and (*b*) the excess of the fair market value of the new stock or securities over the cost or fair market value as of March 1, 1913, of the old. In other words, the taxable profit will be (*a*) or (*b*), whichever is less. Upon a subsequent sale of the new stock or securities their cost to the taxpayer will be the cost or fair market value as of March 1, 1913, of the old stock and securities, plus the profit taxed on the exchange.

3108a Art. 1570. Readjustment of Partnership Interests.—*When a partner retires from a partnership, or it is dissolved, he realizes a gain or loss measured by the difference between the price received for his interest and the cost to him or (if acquired prior thereto) the fair market value as of March* 1, 1913, *of his interest in the partnership, including in such cost or value the amount of his share in any undistributed partnership net income earned since February* 28, 1913, *on which the income tax has been paid. If, however, the partnership distributes its assets in kind and not in cash, the partner realizes no gain or loss until he disposes of the property received on distribution. See article* 1566. *Whenever a new partner is admitted to a partnership, or any existing partnership is reorganized, the facts as to such change or reorganization should be fully set forth in the next return of income, in order that the Commissioner may determine whether any gain or loss has been realized by any partner. See also article* 1563.

INVENTORIES.

3109 Art. 1581. Need of Inventories.—In order to reflect the net
50 income correctly, inventories at the beginning and ending of each
1861 year are necessary in every case in which the production, purchase or sale of merchandise is an income-producing factor. The inventory should include raw materials and supplies on hand that have been acquired for sale, consumption or use in productive processes, together with all finished or partly finished goods. Title to the merchandise included in the inventory should be vested in the taxpayer and goods merely ordered for future delivery and for which no transfer of title has been effected should be excluded. The inventory should include merchandise sold but not shipped to the customer at the date of the inventory, together with any merchandise out upon consignment, *but if such goods have been included in the sales of the taxable year they should not be taken in the inventory.* It should also include merchandise purchased, although not actually received, to which

title has passed to the purchaser. In this regard care should be exercised to take into the accounts all invoices or other charges in respect of merchandise properly included in the inventory, but which is in transit or for other reasons has not been reduced to physical possession.

3110 Art. 1582. Valuation of Inventories.—Inventories should be valued at (*a*) cost or (*b*) cost or market whichever is lower. *Whichever basis is adopted must be applied to each item and not merely to the total of the inventory; that is, if for instance basis (b) is adopted, the value of each item in the inventory will be measured by market if that is lower than cost, or by cost if that is lower than market. A taxpayer may, regardless of his past practice, adopt the basis of cost or market, whichever is lower, for his* 1918 *inventory, provided a disclosure of the fact and that it represents a change is made in the return. Thereafter changes can be made only after permission is secured from the Commissioner. But see article* 1585 *for inventories by dealers in securities.* [Whichever basis was adopted by a taxpayer in respect of the taxable year 1917 must be continued unless upon application to the Commissioner permission is granted to change. If basis (*b*) is used it must be applied to each item in the inventory and not to a part only.] Inventories should be recorded in a legible manner and properly computed and summarized and should be preserved as a part of the accounting records of the taxpayer. Goods taken in the inventory which have been so intermingled that they can not be identified with specific invoices will be deemed to be the goods most recently purchased. [*This last sentence was formerly a part of the next article.*]

3111 Art. 1583. Inventories at Cost.—Cost means:

(1) In the case of merchandise purchased, the invoice price less trade or other discounts except strictly cash discounts approximating a fair interest rate, which may be deducted or not at the option of the taxpayer provided a consistent course is followed. To this net invoice price should be added transportation or other necessary charges incurred in acquiring possession of the goods. [*The sentence formerly here is now the last sentence of* ¶3110, *above.*]

(2) In the case of merchandise produced by the taxpayer, (*a*) the cost of raw materials and supplies entering into or consumed in connection with the product, (*b*) expenditures for direct labor, (c) indirect expenses incident to and necessary for the production of the particular article, including in such indirect expenses a reasonable proportion of management expenses, but not including any cost of selling or return on capital whether by way of interest or profit.

In any industry in which the usual rules for computation of cost of production are inapplicable, costs may be approximated upon such basis as may be reasonable and in conformity with established trade practice in the particular industry.

3112 Art. 1584. Inventories at Market.—Market means the current bid price prevailing at the date of the inventory for the particular merchandise, and is applicable to goods purchased and on hand and to basic materials in goods in process of manufacture and in finished goods on hand, exclusive, however, of goods on hand or in process of manufacture for delivery upon firm sales contracts at fixed prices entered into before the date of the inventory. Where no open market quotations are available the taxpayer must use such evidence of a fair market price *at the date or dates nearest the inventory* as may be available to him, such as specific transactions in reasonable volume entered into in good faith, or compensation paid for

cancellation of contracts for purchase commitments. The burden of proof will rest upon the taxpayer in each case to satisfy the Commissioner of the correctness of the prices adopted. It is recognized that in the latter part of 1918, by reason among other things of governmental control not having been relinquished, conditions were abnormal and in many commodities there was no such scale of trading as to establish a free market. In such a case, when a market has been established during the succeeding year, a claim may be filed *for any loss sustained* in accordance with the provisions of section 214 (*a*) (12) *or section* 234 (*a*) (14) of the statute [for a recomputation of the net income of the preceding taxable year and an adjustment of the income and war excess profits taxes]. See articles 261–268.

3113 **Art. 1585. Inventories by Dealers in Securities.**—A dealer in securities, who in his books of account regularly inventories unsold securities on hand either (*a*) at cost or (*b*) at cost or market value whichever is lower, may make his return upon the basis upon which his accounts are kept; provided that a description of the method employed shall be included in or attached to the return, that all the securities must be inventoried by the same method, and that such method must be adhered to in subsequent years, unless another be authorized by the Commissioner. For the purpose of this rule a dealer in securities is a merchant of securities, whether an individual, partnership or corporation, with an established place of business, regularly engaged in the purchase of securities and their resale to customers, hat is, one who as a merchant buys securities and sells them to customers with a view to the gains and profits that may be derived therefrom. If such business is simply a branch of the activities carried on by such person, the securities inventoried as here provided may include only those held for purposes of resale and not for investment. Taxpayers who buy and sell or hold securities for investment or speculation, and not in the course of an established business, and officers of corporations and members of partnerships, who in their individual capacities buy and sell securities, are not dealers in securities within the meaning of this rule.

NET LOSSES.

3114 51-59 1913 **Art. 1601. Scope of Net Losses.**—As used in the statute the term "net loss" means either a business operating loss or a loss realized by a bona fide sale of property constructed, installed or acquired on or after April 6, 1917, for the production of articles contributing to the prosecution of the war. The amount of net loss claimed must represent an actual net loss over and above all income, including tax-free income. Such losses will be allowable only in respect of a taxpayer having a taxable year beginning after October 31, 1918, and ending prior to January 1, 1920, and after one claim has been allowed no further claim can be considered.

3115 **Art. 1602. Claim for Allowance of Net Loss.**—*A taxpayer having such a net loss may file a claim on form* 46 *with his return of income for the taxable year* 1919. *Such claim should contain a concise statement setting forth the amount of the loss sustained, in accordance with the accompanying return, the nature of the loss, the amount of the taxpayer's net income for the taxable year* 1918, *the taxes paid by him with respect thereto, and all pertinent facts necessary to enable the Commissioner to determine the allowability of the claim.* [A taxpayer having such a net loss may file a claim with the collector of the district in which the taxpayer's return for the preceding year was filed. Such claim should state the name and address of the taxpayer and should contain a

concise statement of the amount of the loss sustained and the basis upon which it has been computed, together with all pertinent facts necessary to enable the Commissioner to determine the allowability of the claim. Each claim should be supported by an affidavit.]

3116 **Art. 1603. Allowance of Net Loss.**—The amount allowed by the Commissioner in respect of any such claim shall be deducted from the net income for the taxable year 1918 and *the income and the war profits and excess profits tax, if any, for such year* [taxes imposed by this title] shall be recomputed accordingly. Any amount found to be due him shall be credited or refunded to the taxpayer [in accordance with the provisions of section 252]. *See section* 252 *of the statute and articles* 1034-1036. In any case in which it is found by the Commissioner that such net loss is in excess of the net income of such preceding taxable year, the taxpayer may carry forward the amount of such excess and claim it as a deduction in computing net income for the succeeding taxable year.

FISCAL YEAR WITH DIFFERENT RATES.

3117 60-71 1666 **Art. 1621. Fiscal Year with Different Rates.**—Section 205 of the statute applies to income taxes. For the provisions with respect to war profits and excess profits taxes see section 335 *and articles* 951-955. Subdivision (a), which deals with fiscal years beginning in 1917 and ending in 1918, applies to corporations, including personal service corporations, and to individuals. Subdivision (b), which deals with fiscal years beginning in 1918 and ending in 1919, applies to corporations other than personal service corporations and to individuals. Subdivision (c), which deals with fiscal years beginning in 1917 or 1918 and ending in 1918 or 1919 applies to partnerships and to personal service corporations. See as to partnerships articles 321–327, and as to personal service corporations articles 328–335.

3118 **Art. 1622. Fiscal Year of Corporation Ending in 1918.**—The method provided for computing the tax for a fiscal year beginning in 1917 and ending in 1918 is as follows: (*a*) the tax attributable to the calendar year 1917 is found by computing the income of the taxpayer and the tax thereon in accordance with Title I of the Revenue Act of 1916 as amended and Title I of the Revenue Act of 1917 as if the fiscal year was the calendar year 1917, and determining the proportion of such tax which the proportion of the fiscal year falling within the calendar year 1917 is of the full fiscal year; (*b*) the tax attributable to the calendar year 1918 is found by computing the income of the taxpayer and the tax thereon in accordance with the present statute as if the fiscal year was the calendar year 1918, and determining the proportion of such tax which the portion of such fiscal year falling within the calendar year is of the full fiscal year; and (*c*) the tax for the fiscal year is found by adding the tax attributable to the calendar year 1917 and the tax attributable to the calendar year 1918. If a corporation made its return for the taxable year 1917 on the calendar year basis and for the taxable year 1918 on a fiscal year basis, the tax attributable to the calendar year 1917 need not again be computed and the tax attributable to the calendar year 1918 computed as herein provided shall be the tax of the corporation for the portion of such fiscal year falling within the calendar year 1918. A personal service corporation is not required to pay the tax attributable to the calendar year 1918, since for that year it is treated substantially like a partnership for the purposes of taxation. See section 218 of the statute and articles 328-335.

3119 **Art. 1623. Deductions and Credits in the Case of Corporation Fiscal Year Ending in 1918.**—Net losses deductible from net income of the fiscal year under the provisions of section 204 of the statute shall be deducted in computing the tax attributable to the calendar year 1917, as well as in computing the tax attributable to the calendar year 1918. In computing the tax attributable to the calendar year 1917 the net income computed for the entire period under Title I of the Revenue Act of 1916 as amended and Title I of the Revenue Act of 1917 shall be credited with the excess profits tax computed for the entire period under Title II of the Revenue Act of 1917. In computing the tax attributable to the calendar year 1918 the net income computed for the entire period under the present statute shall be credited with the war profits and excess profits taxes computed for the entire period under Title III of the statute at the rates prescribed for 1918. See section 236 of the statute *and article* 591. Amounts previously paid by the taxpayer on account of the income tax for such fiscal year shall be credited towards the payment of the income tax imposed for such fiscal year by the present statute. Any excess shall be credited or refunded in accordance with the provisions of section 252 [of the statute]. *See articles* 1031 *and* 1034–1036.

3120 **Art. 1624. Fiscal Year of Individual Ending in 1918.**—Since under the law applicable to the calendar year 1917 individuals were not permitted to make returns on the fiscal year basis (see Title I of the Revenue Act of 1916 as amended), the tax of an individual for that part of a fiscal year ending in 1918 attributable to the calendar year 1917 has already been included in the tax for such calendar year and need not *ordinarily* again be computed. The tax for that part of the year attributable to the calendar year 1918 is found by computing the income of the taxpayer for the taxable year and the tax thereon in accordance with the present statute as if the taxable year was the calendar year 1918, and determining the proportion of such tax which the portion of such fiscal year falling within the calendar year is of the full fiscal year.

3121 **Art. 1625. Fiscal Year of Corporation or Individual Ending in 1919.**—The method provided for computing the tax for a fiscal year beginning in 1918 and ending in 1919 is as follows: (*a*) the tax attributable to the calendar year 1918 is found by computing the income of the taxpayer and the tax thereon in accordance with the statute as if the fiscal year was the calendar year 1918, and determining the proportion of such tax which the portion of such fiscal year falling within the calendar year is of the full fiscal year; (*b*) the tax attributable to the calendar year 1919 is found by computing the income of the taxpayer and the tax thereon in accordance with the statute as if the fiscal year was the calendar year 1919, and determining the proportion of such tax which the portion of such fiscal year falling within the calendar year is of the full fiscal year; and (c) the tax for the fiscal year is found by adding the tax attributable to the calendar year 1918 and the tax attributable to the calendar year 1919.

PARTS OF INCOME SUBJECT TO RATES FOR DIFFERENT YEARS.

3122 **Art. 1641. Parts of Income Subject to Rates for Different Years.**—
72 Section 206 of the statute applies to a partner's share of partnership
1678 net income; to a stockholder's share of the net income of a personal service corporation; and to stock dividends received by a taxpayer between January 1 and November 1, 1918, or declared during that period and received by the taxpayer after November 1, 1918, and before *March* 27,

1919 [the expiration of 30 days after the passage of the statute]. For the treatment of income of a partner or of a stockholder in a personal service corporation see sections 218 and 205 of the statute and articles 321–335, 1621 *and* 1624. For the treatment of stock dividends see section 201 and articles 1546 and 1642.

3123 40 833 **Art. 1642. Stock Dividend Subject to Rates for Different Years.**—The method of ascertaining the precise rate applicable to such portions of stock dividends received or credited in 1918 as are taxable at rates prescribed for previous years is as follows: The amount of the income of the recipient to which the 1918 rates are applicable is first ascertained. To such amount is then added the amount of income of the recipient liable to tax at the 1917 rates and the table of 1917 rates applied to see in which brackets such income falls. The income liable to 1916 rates is then added and the table of 1916 rates applied to it. For instance, an individual has $20,000 of income liable to 1918 rates and $25,000 of dividends liable to 1917 rates. The total would be $45,000, of which $20,000 would be taxable at the 1918 rates and $20,000 to $45,000 at the surtax rates under the 1917 table applying to income over $20,000. In order that the correctness of the rates may be verified, taxpayers reporting stock dividends at other than 1918 rates will be required to render a statement at the time of filing their returns showing the corporations from which dividends taking other than 1918 rates were received, with the particulars of the dividends received from each. See also article 1546.

ADVISORY TAX BOARD.

3124 423 2652 **Art. 1701. Submission of Questions to Advisory Tax Board.**—Questions relating to the interpretation or administration of the income tax and war *profits and* excess profits tax laws may be submitted to the Advisory Tax Board by the Commissioner on his own initiative or at the request of any taxpayer directly interested for the purpose of obtaining the recommendation of the Board thereon. When a final conclusion has been reached by the income tax unit of the Internal Revenue Bureau as to the disposition of a matter, any taxpayer directly interested therein may request the Commissioner to submit such matter to the Board. In the case of matters arising in connection with the audit of a taxpayer's return the taxpayer will ordinarily be notified of such conclusion prior to assessment by letter [over the signature of the Commissioner or Deputy Commissioner]. The taxpayer shall file with the Commissioner (to be transmitted to the income tax unit) a request in writing for submission with a statement of his objections to the conclusion of the unit and the reasons for such objections. Such request and statement shall be filed with the Commissioner within thirty days after the taxpayer has been notified of the conclusion of the income tax unit or within such longer period as the Commissioner may allow, but the Board may at its discretion at any time receive additional statements of objections or reasons therefor.

3125 **Art. 1702. Procedure before Advisory Tax Board.**—Matters submitted to the Advisory Tax Board will ordinarily be considered upon the papers, but a hearing for oral presentation of a case will be granted whenever the Board deems such hearing necessary for the proper disposition thereof. Matters will ordinarily be considered upon the facts presented to the income tax unit. New evidence will not ordinarily be received by the Board, but matters will be recommitted to the income tax unit for further

presentation of facts. Oral or written evidence may, however, be received by the Board whenever it deems such action necessary for the protection of the Government or the prevention of injustice to the taxpayer. Decisions by the Board upon matters referred to it at the request of taxpayers will be transmitted to the Commissioner.

EXTENSION OF EXISTING STATUTES.

3126 429 1620 **Art. 1711. Aids to Collection of Tax.**—In collecting the income *and war profits* and excess profits taxes the Commissioner has the benefit of all existing internal revenue laws. In aid of the enforcement of the statute the Commissioner may require any person to keep specified records, to render returns and statements as directed, to submit himself and his books to examination, and to comply with such regulations as may be prescribed. Section 3165 of the Revised Statutes, as amended by section 1317 of the Revenue Act of 1918, provides [¶440 and ¶1452]:

See also sections 228, 250 and 1318 of the statute and articles 451 and 1002.

FRACTIONAL PART OF CENT.

3127 434 2426 **Art. 1721. When Fractional Part of Cent May be Disregarded.**—In the payment of income or war profits and excess profits taxes, and in each step or computation necessary in determining he amount of any such tax, a fractional part of a cent may be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

MEDIUM OF PAYMENT OF TAX.

3128 435 2428 **Art. 1731. Payment of Tax by Certificates of Indebtedness.**—Collectors will receive at par United States Treasury certificates of indebtedness of the tax series of 1919, dated August 20, 1918, and maturing July 15, 1919, and of series T, dated November 7, 1918, and maturing March 15, 1919, in payment of income *and war profits* and excess profits taxes payable at or before the maturity of the certificates, and certificates of series T 2, having no coupon, dated January 16, 1919, and maturing June 17, 1919, in payment of taxes payable within sixty days before the maturity of the certificates. The terms of the acceptance of certificates of other issues will be prescribed from time to time. The amount at par of the certificates of indebtedness presented by any taxpayer in payment of taxes must not exceed the amount of the taxes to be paid by him.

3129 **Art. 1732. Procedure with Respect to Certificates of Indebtedness.**—Such certificates of indebtedness may be accepted by the collector prior to the date the tax is due and in that case should be forwarded by the collector to the federal reserve bank to be held for his account until the date the tax is due and for deposit on such date. All coupons maturing on or before the date the tax is due must be detached by the taxpayer and collected in ordinary course, but all other coupons must remain attached to the certificate and be forwarded to the federal reserve bank. Any accrued interest to the date the tax is due, not covered by coupons detached as above provided, will be remitted to the taxpayer by the federal reserve bank by check, for which purpose the collector will furnish to the bank the name and address of the taxpayer, the amount and

serial numbers of the certificates presented in each case, the date of issue of the certificates, and the date the tax is due. Collectors shall in no ase pay interest on such certificates nor accept them for an amount other or greater than their face value. Receipts given by collectors to taxpayers should show the amount of certificates of each series received in payment of taxes. For the purpose of saving taxpayers the expense of transmitting such certificates as are held in federal reserve cities to the office of the collector in whose district the taxes are payable, taxpayers desiring to pay taxes by acceptable certificates of indebtedness should communicate with the collector and request from him authority to deposit such certificates to his credit with the federal reserve bank in the city in which the certificates are held.

3130 **Art. 1733. Payment of Tax by Uncertified Checks.**—Collectors may accept uncertified checks in payment of income *and war profits* and excess profits taxes, provided such checks are collectible at par, that is, for their full amount, without any deduction for exchange or other charges. The collector will stamp on the face of each check before deposit the words, "This check is in payment of an obligation to the United States and must be paid at par. No Protest," with his name and title. The day on which the collector receives the check will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If one check is remitted to cover two or more persons' taxes, the remittance must be accompanied by a letter of transmittal stating (*a*) the name of the drawer of the check; (*b*) the amount of the check; (*c*) the amount of any cash, money order or other instrument included in the same remittance; (*d*) the name of each person whose tax is to be paid by the remittance; (*e*) the amount of the payment on account of each person; and (*f*) the kind of tax paid.

3131 **Art. 1734. Procedure with Respect to Dishonored Checks.**—If the bank on which any such check is drawn should refuse to pay it at par, the check should be returned through the depositary bank and be treated in the same manner as a bad check. All expenses incident to the attempt to collect such a check and the return of it through the depositary bank must be paid by the drawer of the check to the bank on which it is drawn, since no deduction can be made from amounts received in payment of taxes. See section 3210 of the Revised Statutes. If any taxpayer whose check has been returned uncollected by the depositary bank should fail at once to make the check good, the collector should proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is also not released from his obligation until the check has been paid. See chapter 191 of the Act of March 2, 1911.

JURISDICTION OF DISTRICT COURTS.

3132 [See ¶454 and ¶1632.]

DEPOSIT OF UNITED STATES BONDS AS SECURITY.

3133 [See ¶456 and ¶2220.]

REPEAL OF FORMER ACTS.

3134 [See ¶461 and ¶2361.]

VALIDATING PROVISION.

3135 [See ¶465 and ¶2667.]

CITATION OF ACT.

3135a [See ¶468 and ¶484.]

INSPECTION OF GOVERNMENT CONTRACTS.

3136 "Sec. 1408. That every person who on or after April 6, 1917, entered into any contract, undertaking, or agreement with the United States, or with any department, bureau, officer, commission, board, or agency under the United States or acting in its behalf, or with any other person having contract relations with the United States, for the performance of any work or the supplying of any materials or property for the use of or for the account of the United States, shall, within thirty days after a request of the Commissioner therefor, file with the Commissioner a true and correct copy of every such contract, undertaking, or agreement.

"Whoever fails to comply with such request of the Commissioner shall be guilty of a misdemeanor and shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both.

"The Commissioner shall (when not violative of the technical military or naval secrets of the Government) have access to all information and data relating to any such contract, undertaking or agreement, in the possession, control or custody of any department, bureau, board, agency, officer or commission of the United States and may call upon any such department, bureau, board, agency, officer or commission for a full statement and description of any allowance for amortization, obsolescence, depreciation or loss, or of any valuation, appraisal, adjustment or final settlement, made in pursuance of any such contract, undertaking, or agreement."

AUTHORITY FOR REGULATIONS.

3137 **Art. 1800. Promulgation of Regulations.**—In pursuance of the
433 statute the foregoing regulations are hereby made and promul-
2591 gated and all rulings inconsistent herewith are hereby revoked.

DANIEL C. ROPER,
Commissioner of Internal Revenue.

Approved: CARTER GLASS, *Secretary of the Treasury.*
[Preliminary edition not dated; Released: February 25, 1919.]
[Revised edition approved April 17, 1919; Released: April 21, 1919.]

End of Part IV.

End of Regulations 45, Revised.

Re: Extension of Time for Filing Returns.

To Collectors of Internal Revenue and Others Concerned:

3138 Although no general extension of time will be authorized for filing
1507 Federal Income Tax returns due March 15, the Commissioner of Internal Revenue has approved a novel feature of tax collection which will serve for all practical purposes as a possible extension of forty-five days for the filing of corporation income and excess profits tax returns in cases where corporations are unable to complete and file their returns of March 15.

If a corporation finds that, for good and sufficient reason, it is
3139 impossible to complete its return by March 15, it may make a return of the estimated tax due and make payment thereof not later than March 15. If meritorious reason is shown as to why the corporation is unable to complete its return by the specified date, the collector will accept the payment of the estimated tax and agree to accept the revised and completed tax return within a period of not more than 45 days.

Under the plan adopted for corporation payments and returns,
3140 the Government will be able to collect approximately the amount of tax due on or before March 15, thus meeting its urgent needs, and corporations actually requiring further time for the preparation of their complete returns will be granted ample time in which to do so.

One of the advantages of this plan is that it relieves the taxpayer
3141 of one-half of one per cent interest per month that would be attached to the payment of the taxes under an extension granted at the request of the taxpayer. The taxpayer will, of course, not be relieved of interest on such amount as his payment may fall short of the tax found later to be due on the basis of his final return.

Should the payment on March 15 of the estimated tax due be
3142 greater than the tax eventually found to be due on examination of the completed return the excess payment will automatically be credited to the next installment which will be due on June 15.

Provision for systematically handling this new feature will be
3143 made in the construction of the new return blanks for corporations. The new form will be a combined income and excess profits blank, embodied in which is a detachable letter of remittance. Any corporation which finds that, for sufficient reasons, it cannot complete its return by March 15, may detach and fill out the letter of remittance, and forward same to the collector on or before March 15, together with a check, money-order or draft for the tax due on that date. If the exact tax is not known the estimated tax due will be paid in this manner. A statement in writing of the reasons why it is impossible for the corporation to complete the return by the specified date must accompany every such remittance.

Individual taxpayers will be given similar privileges in cases in
3144 which it is made clear by the taxpayer that the time available is not sufficient to enable him to complete his return by March 15. No reason exists, according to the Internal Revenue officials, for delaying the filing of the returns of individual incomes, except in unusually difficult cases.

Forms for returns of individual incomes up to $5,000 will be dis-
3145 tributed by collectors within a few days. Forms for larger incomes will be available about February 24. Corporation blanks will be distributed by March 1. Regulations governing the administration of the new Income Tax will also be available before March 1.

Daniel C. Roper,
Commissioner of Internal Revenue.

February 13, 1919.

(T. D. 2792.)

Income Tax Extension of Time in Which to File Returns of Taxpayers for the Year 1918 With the Collector of Internal Revenue for the District of Hawaii, Pursuant to the Requirements of the New Revenue Act.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

TO COLLECTORS OF INTERNAL REVENUE AND OTHERS CONCERNED:

3146 Because of the fact that it will be impossible to put into the hands
1507 of taxpayers residing or located in the Internal Revenue District
3138 of Hawaii the blank forms and instructions prescribed by this Department for the use of taxpayers in making returns pursuant to the new Revenue Act in time for such returns to be filed on or before the due date—March 15, 1919—an extension of time of sixty days from that date is hereby granted to all taxpayers filing returns in the Internal Revenue District of Hawaii.

DANIEL C. ROPER,
Commissioner of Internal Revenue.

Approved: February 19, 1919.
CARTER GLASS,
Secretary of the Treasury.

(T. D. 2794.)

Meaning of "Nonresident Alien."

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

TO COLLECTORS OF INTERNAL REVENUE AND OTHERS CONCERNED:

3147 "Nonresident alien individual" means an individual (a) whose
489 residence is not within the United States, and (b) who is not a
491
493 citizen of the United States.
2973

3148 Residence will be determined in accordance with the following:

(1) **Establishment of Residence.**—Any alien living in the United
3149 States who is not a mere transient, as explained below, is a resident of the United States, for purposes of the income tax. Whether he is a transient or not is determined by his intentions with regard to his stay, If he lives in the United States, and has no definite intention as to his stay. he is a resident. The best evidence of his intention is afforded by the conduct, acts, and declarations of the alien. The typical transient is one who stops for a short time in the course of a journey through the United States—sometimes performing labor, sometimes not—or one who enters the United States intending only to stay long enough to carry out some purpose, object, or plan not involving an extended stay in the United States. A mere floating intention indefinite as to time, to return to another country, is not sufficient to constitute him a transient.

3150 (2) **Proof of Residence.**—An alien's statements as to his intention with regard to residence are not conclusive, but when unequivocal will determine the question of his intention, unless his conduct, acts or other

surrounding circumstances contradict the statements. It sometimes occurs that an alien who genuinely intends his stay to be transient may put off his departure from time to time by reason of changed conditions remaining a transient though living in the United States for considerable time. The fact that an alien's family is abroad does not necessarily indicate that he is a transient rather than a resident. An alien, who enters this country intending to make his home in a foreign country as soon as he has accumulated a sum of money sufficient to provide for his journey abroad, is to be considered a transient provided his expectation in this regard may reasonably be fulfilled within a comparatively short time, considering the rate of his savings.

3151 (3) **Loss of Status as a Resident.**—It will be presumed that an alien who has established a residence in the United States as outlined above, continues to be a resident until he or his family evidence an intention to change residence to another country by starting to remove. Thus, alien residents who, following the armistice agreement of November, 1918, take steps toward returning to their native countries, as by applying for passports, are to be regarded as residents for that portion of the taxable year which elapsed up to the time that such step was taken.

3152 (4) **Practice of Employers in Determining Status of Alien Employees** —Aliens employed in the United States are prima facie regarded as nonresidents. If wages are paid without withholding the tax, the employer should be provided with written proof of fact which overcome the presumption that such alien is a nonresident. Such facts include the following:

(a) If an alien has been living in the United States for as much as
3153 one year immediately prior to the time he entered the employment of the withholding agent, or if he has been regularly employed by an individual resident in the United States or by a resident corporation in the same city or county for as much as three months immediately prior to any payment by the employer, he may be treated as a resident in deciding as to the necessity of withholding part of such payment, provided no facts are known to the employer showing that he is in fact a transient, such as one of the type mentioned under (1). The facts with regard to the length of time the alien has thus lived in this country or has been so regularly employed may be established by the certificate of the alien;

(b) The employer may also obtain evidence to overcome the prima
3154 facie presumption of nonresidence by securing from the alien Form 1078, revised, properly executed or an equivalent certificate of the alien establishing residence. Having secured such evidence from the alien, the employer may rely thereon unless the statement of the alien was false and the employer had reasonable cause to believe it false, and may continue to rely thereon until the alien ceases to be a resident under the provisions of the preceding paragraph.

An employer who seeks to account for failure to withhold before this
3155 date if he did not at the time secure Form 1078 or its equivalent, is permitted to prove the former status of the alien by any material evidence.

3156 (5) Treasury Decision No. 2242 [¶489, ¶491 and ¶493] is modified so far as inconsistent herewith.

3157 Form 1078, as revised, is as follows:

[For Form 1078 see Supplementary Page 34.]

DANIEL C. ROPER,
Commissioner of Internal Revenue.

Approved: February 21, 1919.
CARTER GLASS,
Secretary of the Treasury.

Re: Extension of Time for Filing Returns.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

Income taxpayers both corporation and individual, were to-day
3158 granted by the Internal Revenue Bureau further relief with respect
1507 to the filing of their completed tax returns for 1918. The statement
3138 that the taxpayer is unable by March 15, to execute and file the complete return will be accepted, under the new procedure, as sufficient reason for extending for forty-five days the time for filing complete income and excess profits returns, provided in every case the taxpayer pays on or before March 15 at least 25% of the estimated amount of the tax due.

A supply of blanks of Form 1040–T, for the use of individuals as
3159 tentative return on the estimated tax basis, were shipped to each collector of Internal Revenue to-day. Collectors will furnish this Form to any individual requesting an extension of time for the filing of his complete return for 1918.

The tentative return to be used by corporations who make payment
3160 of the estimated tax due on or before March 15 is being printed, and a supply will be forwarded to-morrow to each collector, who will mail these Forms to every corporation on his list. [To be known as Form 1031–T.]

Under the estimated tax procedure, which is now available to every
3161 taxpayer under the Income and Excess Profits Section of the new Revenue Law, there is no extension beyond the legal due date, March 15, for the payment of the taxes then falling due.

It is urged by the Bureau that the estimates be computed on the
3162 most exact basis available. Should the first payment to be made on or before March 15, under this plan, be greater than the amount eventually found to have been due upon examination of the completed return the excess payment will be automatically credited against the next installment, which will be due June 15.

The taxpayer will not be relieved, however, under this plan, of the
3163 interest due upon any amount by which his payment on March 15 may fall short of the amount found to have been due upon examination of the completed return.

Commissioner Daniel C. Roper, in announcing the further relief for
3164 taxpayers in the matter of completing their returns, stated that he believed the plan is not only simple and workable, but adequately protects the interests of the taxpayer and the Government.

February 27, 1919.

(T. D. 2796.)

3165 **The Time for Filing Returns of Information, Fiduciary Returns,**
1507 **Form 1041, Withholding Returns, Forms 1042 and 1013, and Partnerships as Hereinafter Outlined, is Extended to May 15, 1919, and to March 15, 1919, in the Case of Corporations and Partnerships Having a Fiscal Year Ending in 1918.**—In view of the delay in the final passage of the Revenue Act of 1918 and of the preparation of the forms required thereunder, an extension of time to include May 15, 1919, is hereby

granted for the filing of returns of information (forms 1099 and 1096), fiduciary returns (form 1041), annual withholding returns (form 1042, accompanied by form 1098, and form 1013,) returns of partnerships which are required to file returns on the calendar year basis, and all other returns which are not the basis for the assessment of the tax.

3166 This decision shall not be construed as relieving taxpayers from filing returns which serve as a basis for assessment, even though the person making the return is not taxable thereon, nor as relieving beneficiaries, partners and stockholders of personal service corporations from including in their personal returns their distributive share of the income accruing to the trust or estate or the partnership or personal service corporation, whether distributed or not.

3167 Partnerships and corporations having a fiscal year ending in 1918
3247 which have secured extensions of time which have not expired are hereby granted an extension of time to March 15, 1919, for the filing of such returns. When the returns are filed, two forms should be used and two computations made, one showing on the return form used for 1917 the tax calculated on the whole income for the entire period under the provisions and at the rates prescribed by the Act of September 8, 1916, and the Act of October 3, 1917, the other showing on the form for 1918 the tax on the whole income for the entire period, calculated under the provisions and at the rates prescribed by the Revenue Act of 1918. The tax due will be the sum of so many twelfths of the first amount as there are months in 1917 covered by the return and of the second amount as there are months in 1918.

3168 In view of the disturbed conditions abroad and the consequent interference with the usual channels of communication, an extension of time for filing returns of income for 1918 and subsequent years is hereby granted in the case of alien individuals actually living beyond the boundaries of the United States and corporations, or their proper representatives in the United States, and of American citizens residing or traveling abroad, including persons in military or naval service on duty outside the United States, for such period as may be necessary, not exceeding 90 days after proclamation by the President of the end of the war with Germany. In all such cases an affidavit must be attached to the return, stating the causes of the delay in filing it, in order that the Commissioner may determine whether the failure to file the return in time was due to a reasonable cause and not to wilful neglect. If the showing justifies the conclusion that the failure to file the return in time was excusable, no penalty by way of addition to the tax will be imposed, except interest as provided by the statute. (T. D. 2796, signed by Commissioner Daniel C. Roper, and dated February 27, 1919.)

(VICTORY LIBERTY LOAN ACT.)

(Sections 1, 2, and 4.)

Public—No. 328—65th Congress.

In effect March 3, 1919.

3169 **Exemption of Liberty Loan Bond and Note Interest.**—That the
975 Second Liberty Bond Act is hereby amended by adding thereto a
2868 new section to read as follows:
3297

3170 "Sec. 18. (a) That in addition to the bonds and certificates of indebtedness and war-savings certificates authorized by this Act and amendments thereto, the Secretary of the Treasury, with the approval of the President, is authorized to borrow from time to time on the

credit of the United States for the purposes of this Act, and to meet public expenditures authorized by law, not exceeding in the aggregate $7,000,000,000, and to issue therefor notes of the United States at not less than par in such form or forms and denomination or denominations, containing such terms and conditions, and at such rate or rates of interest, as the Secretary of the Treasury may prescribe, and each series of notes so issued shall be payable at such time not less than one year nor more than five years from the date of its issue as he may prescribe, and may be redeemable before maturity (at the option of the United States) in whole or in part, upon not more than one year's nor less than four months' notice, and under such rules and regulations and during such period as he may prescribe.

3171 "(b) The notes herein authorized may be issued in any one or more of the following series as the Secretary of the Treasury may prescribe in connection with the issue thereof:

3172 "(1) Exempt, both as to principal and interest, from all taxation (except estate or inheritance taxes) now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority;

3173 "(2) Exempt, both as to principal and interest, from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations;

3174 "(3) Exempt, both as to principal and interest, as provided in paragraph (2); and with an additional exemption from the taxes referred to in clause (b) of such paragraph, of the interest on an amount of such notes the principal of which does not exceed $30,000, owned by any individual, partnership, association. or corporation; or

3175 "(4) Exempt, both as to principal and interest, from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States. or by any local taxing authority, except (a) estate or inheritance taxes, and (b) all income, excess-profits, and war-profits taxes, now or hereafter imposed by the United States,upon the income or profits of individuals, partnerships, associations, or corporations.

3176 "(c) If the notes authorized under this section are offered in more than one series bearing the same date of issue, the holder of notes of any such series shall (under such rules and regulations as may be prescribed by the Secretary of the Treasury) have the option of having such notes held by him converted at par into notes of any other such series offered bearing the same date of issue.

3177 "(d) None of the notes authorized by this section shall bear the circulation privilege. The principal and interest thereof shall be payable in United States gold coin of the present standard of value. The word 'bond' or 'bonds' where it appears in sections 8, 9, 10, 14, and 15 of this Act as amended, and sections 3702, 3703, 3704, and 3705 of the Revised Statutes, and section 5200 of the Revised Statutes as amended, but in such sections only, shall be deemed to include notes issued under this section."

3178 **Sec. 2.** (a) That until the expiration of five years after the date of the termination of the war between the United States and the German Government, as fixed by proclamation of the President, in addition to the exemptions provided in section 7 [¶976 and ¶2869] of the Second Liberty Bond Act in respect to the interest on an amount of bonds and certificates, authorized by such Act and amendments thereto, the prin-

cipal of which does not exceed in the aggregate $5,000, and in addition to all other exemptions provided in the Second Liberty Bond Act or the Supplement to Second Liberty Bond Act [¶981 and ¶2871], the interest received on and after January 1, 1919, on an amount of bonds of the First Liberty Loan Converted, dated November 15, 1917, May 9, 1918, or October 24, 1918, the Second Liberty Loan, converted and unconverted, the Third Liberty Loan, and the Fourth Liberty Loan, the principal of which does not exceed $30,000 in the aggregate, owned by any individual, partnership, association, or corporation, shall be exempt from graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations.

3179 (b) In addition to the exemption provided in subdivision (a), and in addition to the other exemptions therein referred to, the interest received on and after January 1, 1919, on an amount of the bonds therein specified the principal of which does not exceed $20,000 in the aggregate, owned by any individual, partnership, association, or corporation, shall be exempt from the taxes therein specified: *Provided*, That no owner of such bonds shall be entitled to such exemption in respect to the interest on an aggregate principal amount of such bonds exceeding three times the principal amount of notes of the Victory Liberty Loan originally subscribed for by such owner and still owned by him at the date of his tax return.

3180 **Sec. 4.** That section 3 of the Fourth Liberty Bond Act is hereby
991 amended to read as follows:

"Sec. 3. That, notwithstanding the provisions of the Second Liberty Bond Act or of the War Finance Corporation Act or of any other Act, bonds, notes, and certificates of indebtedness of the United States and bonds of the War Finance Corporation shall, while beneficially owned by a nonresident alien individual, or a foreign corporation, partnership, or association, not engaged in business in the United States, be exempt both as to principal and interest from any and all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States or by any local taxing authority." (Sections 1, 2, and 4 of "An Act to amend the Liberty Bond Acts and the War Finance Corporation Act, and for other purposes", known as the "Victory Liberty Loan Act", approved by the President, March 3, 1919.)

3180a Supplementary Return and Additional Tax Payment under the Revenue Act of 1918 by Fiscal Year Corporations for Taxable Years Ending in 1918.—Answering telephone inquiry corporation which paid income and excess profits tax at 1917 rates for fiscal year ended in 1918 should file returns in accordance with Article 952 of Part II, preliminary regulations, and pay at least one-fourth of additional amount due on or before March 15, 1919, and balance as installments fall due. If none of tax has been paid at least one-fourth of total tax will be payable March 15 and balance in installments. (Telegram to The Corporation Trust Company, signed by Commissioner Daniel C. Roper and dated March 3, 1919.)

The next page is page 411.

REGULATIONS 45, REVISED.

PART II A.
INCOME TAX ON CORPORATIONS.

TABLE OF CONTENTS.

For table of contents of Regulations 45, Revised, Parts I, II A, III, and IV, see page 301.

SEE NOTE ON PAGE 301.

TAX ON CORPORATIONS.

3181 **Art. 501. Income Tax on Corporations.**—The statute imposes an
260 income tax at a fixed rate on all corporations not expressly exempt.
1662 See section 231 *of the statute*. The tax is upon net income, as defined in the statute, after deducting from gross income, as defined in the statute, the allowable deductions. See sections 232, 233, 234 and 235. Certain credits are allowed against net income and against the amount of the tax. See sections 236 and 238. The tax is payable upon the basis of returns rendered by the corporations liable thereto, except that in some cases it is to be paid at the source of the income. See sections 237, 239, 240 and 241. The statute also imposes on corporations a war profits and excess profits tax. See Part II B of the regulations. For the income tax on individuals, for administrative provisions, and for definitions and general provisions, see Parts I, III and IV of the regulations.

3182 **Art. 502. Rates of Tax.**—The income tax on corporations is at the rate of 12 per cent of the net income subject to tax for the calendar year 1918 and at the rate of 10 per cent of the net income subject to tax for the calendar year 1919 and subsequent years. In order to determine the amount subject to tax the net income, as defined in section 232 of the statute and article 531 of the regulations, is first entitled to the credits specified in section 236 of the statute and article 591.

3183 **Art. 503. Corporations Liable to Tax.**—Every corporation, domestic or foreign, not exempt under section 231 of the statute, is liable to the tax. It makes no difference that a domestic corporation may receive no income from sources within the United States. On the other hand, a foreign corporation is taxed only on its income from sources within the United States. See section 233 of the statute and article 550. For what the term "corporation" includes and for the difference between domestic and foreign corporations see section 1 and articles 1501-1509.

3184 **Art. 504. Tax on Transportation Corporations.**—The Act to provide
264 for the operation of transportation systems while under federal
1684 control, for the just compensation of their owners, and for other purposes, of March 21, 1918, authorizes the President to agree with carriers for their just compensation and provides:

> Every such agreement shall provide that any Federal taxes under the Act of October third, nineteen hundred and seventeen, or Acts in addition thereto or in amendment thereof, commonly called war taxes, assessed for the period of Federal control beginning January first, nineteen hundred and eighteen, or any part of such period, shall be paid by the carrier our of its own funds, or

shall be charged against or deducted from the just compensation; that other taxes assessed under Federal or any other governmental authority for the period of Federal control or any part thereof, either on the property used under such Federal control or on the right to operate as a carrier, or on the revenues or any part thereof derived from operation (not including, however, assessments for public improvements or taxes assessed on property under construction, and chargeable under the classification of the Interstate Commerce Commission to investment in road and equipment), shall be paid out of revenues derived from railway operations while under Federal control: that all taxes assessed under Federal or any other governmental authority for the period prior to January first, nineteen hundred and eighteen, whenever levied or payable, shall be paid by the carrier out of its own funds, or shall be charged against or deducted from the just compensation.

[Accordingly, in the case of transportation corporations while under federal control five-sixths of the tax for the calendar year 1918 and four-fifths of the tax for each calendar year thereafter shall be paid by the carrier out of its own funds or deducted from its just compensation, and the remainder of the tax shall be paid out of revenues derived from railway operations while under federal control.]

CONDITIONAL AND OTHER EXEMPTIONS

3185 265 1739 **Art. 511. Proof of Exemption.**—In order to establish its exemption, and thus be relieved of the duty of filing returns of income and paying the tax, it is necessary that every organization claiming exemption, except personal service corporations, file an affidavit with the collector of the district in which it is located, showing the character of the organization, the purpose for which it was organized, the sources of its income and its disposition, whether or not any of its income is credited to surplus or may inure to the benefit of any private stockholder or individual, and in general all facts relating to its operations which affect its right to exemption. To such affidavit should be attached a copy of the charter or articles of incorporation and by-laws of the organization. Upon receipt of the affidavit and other papers by the collector, he will inform the organization whether or not it is exempt. If, however, the collector is in doubt as to the taxable status of the organization, he will refer the affidavit and accompanying papers to the Commissioner for decision. When an organization has established its right to exemption, it need not thereafter make a return of income or any further showing with respect to its status under the law, unless it changes the character of its organization or operations or the purpose for which it was originally created. Collectors will keep a list of all exempt corporations, to the end that they may occasionally inquire into their status and ascertain whether or not they are observing the conditions upon which their exemption is predicated. *As to personal service corporations see section* 218 *of the statute and articles* 328-335.

3186 **Art. 512. Agricultural and Horticultural Organizations.**—Agricultural or horticultural organizations exempt from tax do not include corporations engaged in growing agricultural or horticultural products or raising live stock or similar products for profit, but include only those organizations which, having no net income inuring to the benefit of their members, are educational or instructive in character and have for their purpose the betterment of the conditions of those engaged in these pursuits, the improvement of the grade of their products, and the encouragement and promotion of these industries to a higher degree of efficiency. Included in this class as exempt are organizations such as county fairs and like associations of a quasi-public character, which through a system of awards,

prizes or premiums are designed to encourage the production of better live stock, better agricultural and horticultural products, and whose income, derived from gate receipts, entry fees, donations, etc., is used exclusively to meet the necessary expenses of upkeep and operation. Societies or associations which have for their purpose the holding of annual or periodical race meets, from which profits inure or may inure to the benefit of the members or stockholders, do not come within the terms of this exemption. A corporation engaged in the business of raising stock or poultry, or growing grain, fruits or other products of this character, as a means of livelihood and for the purpose of gain, is an agricultural or horticultural society only in the sense that its name indicates the kind of business in which it is engaged, and it is not exempt from tax.

3187 **Art. 513. Mutual Savings Banks.**—A Massachusetts savings bank, otherwise exempt, which establishes an insurance department under the statutes of that State, does not thereby become subject to tax upon the income received by such department.

3188 **Art. 514. Fraternal Beneficiary Societies.**—A fraternal beneficiary society is exempt from tax only if operated under the "lodge system," or for the exclusive benefit of the members of a society so operating. *"Operating under the lodge system" means carrying on its activities under a form of organization that comprises local branches, chartered by a parent organization and largely self-governing, called lodges, chapters, or the like.* [It must be a society organized under a charter, which has duly appointed or elected officers and an adopted ritual and ceremonial, holds meetings at stated intervals and is supported by dues or assessments.] In order to be exempt it is also necessary that the society have an established system for the payment to its members or their dependents of life, sick, accident or other benefits.

3189 **Art. 515. Building and Loan Associations.**—A building and loan association entitled to exemption is one organized pursuant to the laws of the United States or of some State or Territory thereof, which accumulates funds to be loaned to its members and to be repaid in small periodical installments. The statute requires that the members of the association shall share in its profits on substantially the same footing. Subject to this requirement, it does not prevent exemption that the association issues prepaid stock entitled to a specified percentage of the profits. Where, however, the association issues paid up stock, the holders of which are entitled to a fixed dividend and also to share in the profits with all the other holders of stock, it is not exempt.

3190 **Art. 516. Cemetery Companies.**—A cemetery company having a capital stock represented by shares, or which is operated for profit or for the benefit of others than its members, does not come within the exempted class. A cemetery company of which all lot owners are members, issuing preferred stock entitling the holder to a semi-annual dividend of 4 per cent, and whose articles of incorporation provide that the preferred stock shall be retired at par as soon as sufficient funds are realized from sales and that all funds realized in addition thereto shall be used by the company for the care and improvement of the cemetery property, is within the exemption.

3191 **Art. 517. Religious, Charitable, Scientific and Educational Corporations.**—The exemption applies only to a corporation or association. It does not include the case of a trust, under which the trustee is authorized to use the trust property for religious purposes. In order to be exempt the corporation or association must meet three tests: (*a*) it must be organized and operated for one or more of the specified purposes; (*b*) it must be organized and operated exclusively for such purposes; and (*c*) no part of its income must inure to the benefit of private stockholders or individuals.

3192 (1) Charitable corporations include an association for the relief of the families of clergymen, even though the latter make a contribution to the fund established for this purpose; or for furnishing the services of trained nurses to persons unable to pay for them; or for aiding the general body of litigants by improving the efficient administration of justice. Educational corporations *may* include an association whose sole purpose is the instruction of the public [even if it merely disseminates propaganda on a single question. Thus an association inculcating prohibition or protectionist principles is exempt.] *This* [The same] is true of an association to promote acquaintance with the Spanish language and literature, although it has incidental amusement features; of an association to increase knowledge of the civilization of another country; and of a Chautauqua association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community and whose amusement features are incidental to this purpose. *But associations formed to disseminate controversial or partisan propaganda are not educational within the meaning of the statute.* Societies designed to encourage the performance of first class orchestral music are not exempt, the purpose being merely to provide a high grade of entertainment. Scientific corporations include an association for the scientific study of law, to the end of improvement in its administration.

3193 (2) Where a religious corporation owns a large quantity of farm land and works it, and also manufactures and sells clothing and other articles of profit, it is not operated exclusively for religious purposes and is not exempt, even though its property is held in common and its profits do not inure to the benefit of individual members of the society.

3194 (3) It does not prevent exemption that private individuals, for whose benefit a charity is organized, receive the income of the corporation or association. The statute refers to individuals having a personal and private interest in the activities of the corporation, such as stockholders. If, however, a corporation issues "voting shares," which entitle the holders upon the dissolution of the corporation to receive the proceeds of its property, including accumulated income, the right to exemption does not exist, even though the by-laws provide that the shareholders shall not receive any dividend or other return upon their shares.

3195 **Art. 518. Business Leagues.**—A business league is an association of persons having some common business interest, which limits its activities to work for such common interest and does not engage in a regular business of a kind ordinarily carried on for profit. Its work need not be similar to that of a chamber of commerce or board of trade. An association engaged in furnishing information to prospective investors, to enable them to make sound investments, is not such a league, since its members have no common business interest, and it is not exempt, even though

all of its income is devoted to the purpose stated. A clearing house association, not organized for profit, no part of the net income of which inures to any private stockholder or individual, is exempt provided its activities are limited to the exchange of checks and similar work for the common benefit of its members. An association of persons who are engaged in the business of carrying freight and passengers by boats propelled by steam, which is designed to promote the legitimate objects of such business, *and* all of the income of which is derived from membership dues and is expended for office expenses and the salary of a secretary-treasurer, is exempt from tax. An incorporated cotton exchange, whose shares carry the right to dividends, is organized for profit and is not exempt.

3196 Art. 519. Civic Leagues.—A corporation having capital stock and possessing a charter which authorizes it to buy, improve and sell real estate is organized for profit within the meaning of the statute and is not exempt from the tax as a civic league or organization, even though it no longer exercises such powers for profit and is operated exclusively for the promotion of social welfare.

3197 Art. 520. Social Clubs.—The exemption applies to practically all social and recreation clubs which are supported by membership fees, dues and assessments. If a club, by reason of the comprehensive powers granted in its charter, engages in traffic, in agriculture or horticulture, or in the sale of real estate, timber, etc., for profit, such club is not organized and operated exclusively for pleasure, recreation or social purposes, and any profit realized from such activities is subject to tax.

3198 Art. 521. Mutual Insurance Companies and Like Organizations.—It is necessary to exemption that the income of the company be derived solely from assessments, dues and fees collected from members. If income is received from other sources, the corporation is not exempt, even though its additional income is tax exempt. Income, however, from sources other than those specified does not prevent exemption where its receipt is a mere incident of the business of the company. Thus the receipt of interest upon a working bank balance, or of the proceeds of the sale of badges, office supplies or equipment, will not defeat the exemption. The same is true of the receipt of interest upon liberty bonds, where they were purchased as a patriotic duty and were afterwards sold. Where, however, such bonds are bought as a permanent investment, the receipt of the interest destroys the exemption. The receipt of what is in substance an entrance fee, charged by a mutual fire insurance company as a condition of membership, does not render the company taxable, although this fee is called a premium. But the issuance of policies for stipulated cash premiums prevents exemption. *A local* [An] exchange or association to insure the owners of automobiles against fire, theft, collision, public liability and property damage, is exempt, since it performs functions of the same character as a mutual fire insurance company, and is a like organization within the meaning of the statute. *A local reservoir and ditch company may likewise be exempt from tax.* The exemption does not include a telephone clearing association, whose business is to apportion toll rates between independent telephone companies handling the same calls and whose income consists of compensation paid by such companies and receipts from the sale of form blanks. *The phrase "of a purely local character"* qualifies only " *like organizations.*"

3199 **Art. 522. Cooperative Associations.**—(*a*) Cooperative associations, acting as sales agents for farmers or others, in order to come within the exemption must establish that for their own account they have no net income. Cooperative dairy companies [not having capital stock,] which are engaged in collecting milk and disposing of it or the products thereof and distributing the proceeds, less necessary operating expenses, among their members upon the basis of the quantity of milk or of butter fat in the milk furnished by such members, are exempt from the tax. If the proceeds of the business are distributed in any other way than on such a proportionate basis, the company will be subject to tax. A farmers' association is not exempt from taxation where in accounting to farmers furnishing produce for the proceeds of sales it deducts more than the necessary selling expenses incurred. (*b*) Cooperative associations acting as purchasing agents are not expressly exempt from tax and must make returns of income, but rebates made to purchasers, whether or not members of the association, in proportion to their purchases may be excluded from gross income in computing the net income subject to tax. *Any profits made from non-members and distributed to members in the guise of rebates are, of course, subject to tax.*

NET INCOME DEFINED

3200 280 1787 **Art. 531. Net Income.**—Net income is that portion of the gross income which remains after all proper deductions have been taken into account. The net income of corporations is determined in general in the same manner as the net income of individuals, but the deductions allowed corporations are not precisely the same as those allowed individuals. See sections 233, 234 and 235 of the statute. The net income of corporations is *to be* computed on the same basis as to accounting periods as the net income of individuals. See sections 212 and 226 and articles 21-26 and 431.

GROSS INCOME DEFINED

3201 281 1788 **Art. 541. Gross Income.**—The gross income of a corporation for the purpose of the tax in general includes and excludes the same things as the gross income of an individual. It embraces not only the operating revenues, but also gains, profits and income from all other sources, such as rentals, royalties, interest, dividends from stock in other corporations, and profits from the sale of capital assets. *The proceeds of life insurance policies paid upon the death of the insured to a corporation beneficiary, less any premiums paid by the corporation and not deducted from gross income, are to be included in its gross income.* See sections 213 *and* 215 of the statute and articles 31-88 *and* 294. But in the case of life and mutual marine insurance companies and of foreign corporations there are special provisions. See articles 548-550.

3202 1830 **Art. 542. Sale of Capital Stock.**—The proceeds from the original sale by a corporation of its shares of capital stock, whether such proceeds are in excess of or less than the par value of the stock issued, constitute the capital of the company. If the stock is sold at a premium, the premium is not income. Likewise, if the stock is sold at a discount, the amount of the discount is not a loss deductible from gross income. If, for the purpose of enabling a corporation to secure working capital or for any other purpose, the stockholders donate or return to the corporation to be resold by it certain shares of stock of the company previously issued to them, *or if the corporation purchases any of its stock and holds it as treasury*

stock, the sale of such stock will be considered a capital transaction and the proceeds of such sale will be treated as capital and will not constitute income of the corporation. [If, however, treasury stock, meaning stock previously issued by the corporation and repossessed by it through purchase or otherwise and then carried on its books as an asset, is resold at a price in excess of its cost or value upon repossession, such excess shall be returned as income for the year in which resold. Unissued stock is not treasury stock]. A corporation realizes no gain or loss from the purchase of its own stock. *See articles* 563, 861 *and* 862.

3203 1834 **Art. 543. Contributions by Stockholders.**—Where a corporation requires additional funds for conducting its business and obtains such needed money through voluntary pro rata payments by its stockholders, the amounts so received being credited to its surplus account or to a special capital account, such amounts will not be considered income, although there is no increase in the outstanding shares of stock of the corporation. The payments in such circumstances are in the nature of voluntary assessments upon, and represent an additional price paid for, the shares of stock held by the individual stockholders, and will be treated as an addition to and as a part of the operating capital of the company. [The cancellation by a stockholder of indebtedness owing from the corporation usually has the effect of increasing the capital and surplus of the corporation and not of producing income.] See articles 51, 293, 838 and 860.

3203a 2072 **Art. 544. Sale and Retirement of Corporate Bonds.**—(1) (*a*) *If bonds are issued by a corporation at their face value, the corporation realizes no gain or loss.* (*b*) *If thereafter the corporation purchases and retires any of such bonds at a price in excess of the issuing price or face value, the excess of the purchase price over the issuing price or face value is a deductible expense for the taxable year. See section* 234 *of the statute and article* 563. (*c*) *If, however, the corporation purchases and retires any of such bonds at a price less than the issuing price or face value, the excess of the issuing price or face value over the purchase price is gain or income for the taxable year.*

3203b (2) (*a*) *If bonds are issued by a corporation at a premium, the net amount of such premium is gain or income which should be prorated or amortized over the life of the bonds.* (*b*) *If thereafter the corporation purchases and retires any of such bonds at a price in excess of the issuing price minus any amount of premium already returned as income, the excess of the purchase price over the issuing price minus any amount of premium already returned as income (or over the face value plus any amount of premium not yet returned as income) is a deductible expense for the taxable year.* (*c*) *If, however, the corporation purchases and retires any of such bonds at a price less than the issuing price minus any amount of premium already returned as income, the excess of the issuing price minus any amount of premium already returned as income (or of the face value plus any amount of premium not yet returned as income) over the purchase price is gain or income for the taxable year.*

3203c (3) (*a*) *If bonds are issued by a corporation at a discount, the net amount of such discount is deductible as interest and should be prorated or amortized over the life of the bonds.* (*b*) *If thereafter the corporation purchases and retires any of such bonds at a price in excess of the issuing price plus any amount of discount already deducted, the excess of the purchase price over the issuing price plus any amount of discount already deducted (or over the face value minus any amount of discount not yet deducted) is a deductible expense*

for the taxable year. (c) If, however, the corporation purchases and retires any of such bonds at a price less than the issuing price plus any amount of discount already deducted, the excess of the issuing price plus any amount of discount already deducted (or of the face value minus any amount of discount not yet deducted) over the purchase price is gain or income for the taxable year.

[Comment: Articles 566 and 567 of the preliminary edition read as follows: **Art. 566.** Where a corporation sells its bonds at a discount, the amount of such discount, together with any commission for selling and other expenses incidental to issuing the bonds, constitutes a loss which should be prorated over the life of the bonds sold. The amount thus apportioned to each year will be deductible from the gross income of each such year until the bonds shall have been paid or redeemed. See article 848. **Art. 567.** Where a corporation under the terms of its indenture securing an issue of bonds is required annually or at specified periods to purchase and retire a certain number of its bonds and in doing so pays more than the issuing price of the bonds, the loss sustained is an allowable deduction from gross income for the year in which such purchase is made under the following conditions: (1) If the bonds were sold at face value, then the loss is the difference between the face value and the price at which they were repurchased for retirement. (2) If the bonds were sold at a premium or at a discount, then the loss is the difference between the price at which the bonds were sold and the price at which they were repurchased, plus, in the case of bonds sold at a premium, the amount of such premium already returned as income, or minus, in the case of bonds sold at a discount, the amount of such discount already deducted as a loss. When a corporation sets aside a part of its earnings for the purpose of creating a sinking fund with which to retire its bonded or other indebtedness, the annual additions to such funds are not allowable deductions from gross income.]

3204 Art. 545. **[Art. 544]. Sale of Capital Assets.**—Where property is acquired and later sold for a higher price, the gain on the sale is income. If, however, the property was acquired before March 1, 1913, only such portion of the gain as accrued subsequently to February 28, 1913, is taxable. Where, then, a corporation sells its capital assets in whole or in part, it shall include in its gross income for the year in which the sale was made the amount of the excess of the sales price over the fair market value of such assets as of March 1, 1913, if acquired prior to that date, or over their cost if acquired subsequently to that date. In every case, however, in ascertaining the gain, the cost of the assets, or the fair market value as of March 1, 1913, of the assets acquired prior thereto, should first be reduced by the amount of any charges for depreciation, depletion and other losses which have been or should have been made. If the purchaser takes over all the assets and assumes the liabilities, the amount so assumed is part of the purchase price. *See also article* 563. If the sale is made for stock of another corporation, the rules contained in section 202 of the statute and in articles 1561-1570 are particularly applicable.

3205 Art. 546. **[Art. 545]. Income from Leased Property.**—Where a corporation has leased its property in consideration that the lessee shall pay in lieu of other rental an amount equivalent to a certain rate of dividend on the lessor's capital stock or the interest on the lessor's outstanding indebtedness, together with taxes, insurance, or other fixed charges, such payments shall be considered rental payments and shall be returned by the lessor corporation as income, notwithstanding the fact that the dividends and in-

terest are paid by the lessee directly to the stockholders and bondholders of the lessor. The fact that a corporation has conveyed or let its property and has parted with its management and control, or has ceased to engage in the business for which it was originally organized, will not relieve it from liability to the tax. While the payments made by the lessee directly to the bondholders or stockholders of the lessor are rentals as to both the lessee and lessor (rentals paid in one case and rentals received in the other), to the bondholders and the stockholders such amounts are interest and dividend payments received as from the lessor and as such shall be accounted for in their returns.

3205a Art. 547. Gross Income of Corporation in Liquidation.—*When a*
1728 *corporation is dissolved its affairs are usually wound up by a receiver or trustees in dissolution. The corporate existence is continued for the purpose of liquidating the assets and paying the debts, and such receiver or trustees stand in the stead of the corporation for such purposes. Any sales of property by them are to be treated as if made by the corporation for the purpose of ascertaining the gain or loss. No gain or loss is realized by a corporation from the mere distribution of its assets in kind upon dissolution, however they may have appreciated or depreciated in value since their acquisition. See further articles* 622 *and* 1548.

3206 Art. 548. [Art. 546]. Gross Income of Insurance Companies.—The
2225 gross income of insurance companies consists of their total revenue [derived] from the operation of the business and of their income from all other sources within the *taxable* year [for which the return is made], except as otherwise provided by the statute. Gross income includes net premiums (*that is, gross premiums less returned premiums on policies cancelled and premiums on policies not taken*), investment income, *profits* [income] from the sale of [capital] assets, and all gains, profits and income reported to the State insurance departments, except income specifically exempt from tax. *Premiums received by mutual marine insurance companies which are paid out for reinsurance should be eliminated from gross income and the payments for reinsurance from disbursements.* [Amounts of premium received and paid out under reinsurance treaties should be eliminated from both income and disbursements.] Deposit premiums on perpetual risks received and returned *by fire insurance companies* should be treated in the same manner, as no reserve will be *recognized* [considered] covering liability for such deposits. [but] The earnings on such deposits must [will] be included in the investment income. A net decrease in reserve funds *required by law* within the taxable year must be included in the gross income. See articles 568-572.

3207 Art. 549. [Art. 547.] Gross Income of Life Insurance Companies.—
2256 *A life insurance company shall not include in gross income such portion of any actual premium received from any individual policyholder as is paid back or credited to or treated as an abatement of premium of such policyholder within the taxable year. (a) "Paid back" means paid in cash. (b) "Credited to" means held to the credit of, including dividends applied to pay renewal premiums, to purchase additional paid-up insurance or annuities, or to shorten the endowment or premium-paying period. It does not include dividends provisionally ascertained and apportioned upon deferred dividend policies. (c) "Treated as an abatement of premium" means of the premium for the taxable year. Where the dividend paid back is in excess of the premium received from the policyholder within the taxable year there may be excluded from gross income only the amount of such premium received, and where no*

premium is received from the policyholder within the taxable year the company is not entitled to exclude from its premiums received from other policyholders any amount in respect of such dividend payment. [The amount which a life insurance company is authorized to exclude from gross income on account of any premium refunded to an individual policyholder is limited to an amount not in excess of the actual premium paid by the policyholder within the taxable year. Where the dividend paid is in excess of the premium received, there can be excluded from gross income only the amount of the premium received from the policyholder within the same year. Dividends provisionally ascertained, apportioned or credited on deferred dividend policies can not be excluded or deducted from the total income received, for the reason that the assured has no vested or enforcible right in them and can not at the time of the ascertainment, apportionment or credit, nor until the maturity of the policy, avail himself of such dividend, and that in the event of the death of the assured prior to the expiration of the deferred dividend period the amount so ascertained, apportioned or credited lapses. Book income of life insurance companies which consists of "dividends applied to purchase paid-up additions and annuities," "dividends applied to pay renewal premiums," and "dividends applied to shorten the endowment or premium-paying period, shall not be included in gross income except when the dividends applied are declared on paid-up participating policies.]

3208 Art. 550 [Art 548]. Gross Income of Foreign Corporations.—The
284 gross income of a foreign corporation or insurance company means its
2887 gross income from sources within the United States, as defined and described in articles 91-93 relating tononresident alien individuals. The income from business relating to a foreign country which is transacted by a United States branch or agency of a foreign insurance company must be returned as gross income.

DEDUCTIONS ALLOWED.

3209 Art. 561. Allowable Deductions.—In general the deductions from
287 gross income allowed corporations are the same as allowed indi-
1922 viduals, except that corporations may deduct dividends received from other corporations subject to the tax and may not deduct charitable contributions, and that insurance companies are permitted special deductions. See section 214 of the statute. Particularly, as to business expenses see articles 101-111; as to interest paid see articles 121 and 122; as to taxes paid see articles 131-134; as to losses see articles 141-145; as to bad debts see articles 151-154; as to depreciation see articles 161-171; as to amortization see articles 181-188; as to depletion see articles 201-233; and as to loss in inventory see articles 261-268.

3210 Art. 562. Donations.—Donations made by a corporation for pur-
2014 poses connected with the operation of its business, when limited to charitable institutions, hospitals or educational institutions conducted for the benefit of its employees or their dependents, are a proper deduction as ordinary and necessary expenses. Donations which legitimately represent a consideration for a benefit flowing directly to the corporation as an incident of its business are allowable deductions from gross income. For example, a street railway corporation may donate a sum of money to an organization intending to hold a convention in the city in which it operates, with the reasonable expectation that the holding of such convention will augment its income through a greater number of people using

the cars. Expenses incurred in advertising and promoting the sale of liberty bonds and war savings stamps *over the corporation's name* are deductible. Sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda, *including advertising other than trade advertising*, and contributions for campaign expenses, are not deductible from gross income.

3210a **Art. 563. Sale of Capital Stock, Bonds and Capital Assets.**—*A corporation sustains no deductible loss from the sale of its capital stock.*
302
2063 *See article* 542. *If it sells its bonds at a discount, the amount of such discount is treated as interest paid, and if it retires its bonds at a price in excess of the issuing price, such excess may usually be deducted as expense. See articles* 544 *and* 848. *If the corporation sells its capital assets for less than their cost or fair market value as of March* 1, 1913, *the loss sustained is deductible. See article* 545.

3211 **Art. 564 [Art. 563]. Interest.**—Interest paid by a corporation on scrip
291 dividends is an allowable deduction. So-called interest on preferred
2027 stock, which is in reality a dividend thereon, can not be deducted in arriving at net income. [Interest paid by the taxpayer on a mortgage upon real property of which it is the legal or equitable owner, even though the taxpayer is not directly liable on the bond or note secured by such mortgage, may be deducted as interest on its indebtedness.] In the case of banks and loan or trust companies interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank or loan or trust company may be deducted from gross income.

3212 **Art. 565 [Art. 564]. Effect of Tax-Free Covenant in Bonds.**—Corpo-
292 rations may deduct taxes from gross income to the same extent as
2061 individuals, except that in the case of corporate bonds or obligations containing a tax-free covenant clause, the corporation paying a *federal* tax, or any part of it, [whether federal, State or otherwise,] for some one else pursuant to its agreement is not entitled to deduct such payment from gross income on any ground. *In the case, however, of corporate bonds or obligations containing an appropriate tax-free covenant clause, the corporation paying a State tax or any other than a federal tax for some one else pursuant to its agreement may deduct such payment as interest paid on indebtedness.*

3213 **Art. 566 [Art. 565]. Tax on Bank Stock.**—Banks paying taxes assessed
2050 against their stockholders on account of their ownership of the shares of stock issued by such banks can not deduct the amount of taxes so paid [unless the laws of the State make the tax a direct liability of such banks, that is, a lien upon their property]. The shares of stock being the property of the stockholders, to the extent that the taxes assessed on the value of the shares of stock are property taxes the holders are primarily liable for their payment. As federal statutes prohibit States from imposing any tax upon national banks except upon the value of their real estate, in cases where States levy a tax on the stock of such banks and make it the duty of the banks to pay such tax for the stockholders it is clear that such payments are not deductible from the gross income of such banks. This rule applies also in the case of corporations other than banks, upon the value of whose stock taxes are assessed to the stockholders. Such payments by banks or other corporations are regarded as in the nature of additional dividends and must be included by the stockholder in his dividends received, if he deducts the taxes paid on his behalf. See articles 565 and 134.

3214 to 3218 [**Art. 566.**—*Discount on corporate bonds, and* **Art. 567**—*Retirement of corporate bonds, see paragraph* 3203 *a, b, and c, and "Comment" thereunder.*]

3219 **Art. 567 [Art. 568]. Depositors' Guaranty Fund.**—Banking corporations, which pursuant to the laws of the States in which they are doing
2019 business are required to set apart, keep and maintain in their banks the amount levied and assessed against them by the State authorities as a "Depositors' guaranty fund," may deduct from their gross income the amount so set apart each year to this fund, provided that such fund, when set aside and carried to the credit of the State banking board or duly authorized State officer, ceases to be an asset of the bank and may be withdrawn in whole or in part upon demand by such board or State officer to meet the needs of these officers in reimbursing depositors in insolvent banks, and provided further that no portion of the amount thus set aside and credited is returnable under the laws of the State to the assets of the banking corporation. If, however, such amount is simply set up on the books of the bank as a reserve to meet a contingent liability and remains an asset of the bank, it will not be deductible except as it is actually paid out as required by law and upon demand of the proper State officers.

3220 **Art. 568 [Art. 569]. Deductions Allowed Insurance Companies.**—
2238 Insurance companies are entitled to the same deductions *from gross income* as other corporations, *and also to the deduction of the net addition required by law to be made within the taxable year to reserve funds and of the sums other than dividends paid within the taxable year on policy and annuity contracts. "Paid" includes "accrued" or "incurred" (construed according to the method of accounting upon the basis of which the net income is computed) during the taxable year, but does not include any estimate for losses incurred but not reported during the taxable year.* As payments on policies there should be reported all death, disability *and* [or] other policy claims (other than dividends *as above specified*) paid within the year, including fire, accident and liability losses, matured endowments, annuities, payments on installment policies and surrender values *actually paid.* See also article 566. [There may also be deducted as losses agency balances or other amounts charged off, losses from defalcation, and premium notes voided by lapse provided such notes have at some time been included in returns of income. Taxes paid by insurance companies on the value of their stock outstanding and in the hands of stockholders are not deductible. Mutual marine insurance companies may include in their deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the date of ascertainment thereof and the date of payment thereof, provided such amounts and interest have been included in gross income. See articles 546 and 547.]

3221 **Art. 569 [Art. 570]. Required Addition to Reserve Funds of Insur-**
2249 **ance Companies.**—*Insurance companies may deduct from gross income* [By a special provision insurance companies are entitled to deduct in addition to all other deductions] the net addition required by law to be made within the taxable year to reserve funds, *including in the case of assessment insurance companies the actual deposit of sums with State or Territorial officers pursuant to law as additions to guarantee or reserve funds.* This is considered to mean the net addition required by the specific statutes of the States within which the taxpayer transacts business. A requirement by a State insurance commissioner that a net addition shall be made to certain

amounts retained to meet specified liabilities is not a net addition required by law to be made to reserve funds within the meaning of the statute. Only reserves commonly recognized as reserve funds in insurance accounting are to be taken into consideration in computing the net addition to reserve funds required by law. In the case of a fire insurance company the only reserve fund commonly recognized is the "unearned-premium" fund. *Casualty companies may deduct losses incurred within the taxable year; but unless the net addition to the unpaid loss reserve required by law exceeds such losses incurred, no deduction for the net addition to the unpaid loss reserve may be taken. In any event only the excess of such net addition over such losses may be deducted.* [The net addition to the fund maintained to pay incurred losses is not a legal deduction from gross income. In the case of casualty companies reserve funds consist of amounts maintained to meet the "unearned-premium" liability and the "unpaid-loss" liability.] In the case of life insurance companies the net addition to the "reinsurance reserve"and the "reserve for supplementary contracts not involving life contingencies," and the net addition to any other reserve funds necessarily maintained for the purpose of liquidating policies at maturity, are legally deductible. An increase in the *reserve* [amount] maintained by a life insurance company to pay dividends on deferred dividend policies may not be deducted from gross income. [An assessment insurance company is entitled to deduct from gross income the increase in the amount which it is required by law to keep on deposit with State insurance departments as a protection to policyholders.] Mutual hail and mutual [hail and] cyclone insurance companies are entitled to deduct from gross income the net addition which they are required to make [under the laws of the States in which they operate] to the "guaranty surplus" fund or similar fund. [Corporations issuing policies covering life, health and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, will be permitted to include in the net addition to reserve funds the net addition to any fund specially maintained for the protection of policyholders of the above class. *See next paragraph.*]

3221a Art. 570. Special Deductions Allowed in the Case of Combined Life, Health and Accident Policies.—*Corporations which issue combination policies of life, health and accident insurance on the weekly premium payment plan, continuing for life and not subject to cancellation, may deduct from gross income only such portion of the net addition not required by law made within the taxable year to reserve funds as is needed for the protection of the holders of such combination policies. In general the net addition to any fund especially maintained for the protection of such policyholders may be deducted. The determination by the company of the need for such addition is subject to review by the Commissioner, and the return of income should be accompanied by a full explanation of the basis upon which such fund and the additions to it are determined.*

3221b Art. 571. Special Deductions Allowed Mutual Marine Insurance Companies.—*Mutual marine insurance companies should include in gross income the gross premiums collected and received by them less amounts paid for reinsurance. See section 233 of the statute and article 548. They may deduct from gross income amounts repaid to policyholders on account of premiums previously paid by them, together with the interest actually paid upon such amounts between the date of ascertainment and the date of payment thereof. The remainder of the premiums accordingly form part of the net income of the company, except to the extent that they are subject to the deductions allowed insurance companies in general and other corporations.*

3221c **Art. 572. Special Deductions Allowed Mutual Insurance Companies.**—*Mutual insurance companies (other than mutual life and mutual marine insurance companies), which require their members to make premium deposits to provide for losses and expenses, are allowed to deduct from gross income the aggregate amount of premium deposits returned to their policyholders or retained for the payment of losses, expenses and reinsurance reserves. If, however, any portion of such amount is applied during the taxable year to the payment of losses, expenses or reinsurance reserves, for which a separate allowance is taken, then such portion is not deductible; and if any portion of such amount for which an allowance is taken is subsequently applied to the payment of expenses, losses or reinsurance reserves, then such payment cannot be separately deducted. An amount of premium deposits retained for the payment of expenses and losses, and the amount of such expenses and losses, may not both be dededucted. A company which invests part of the premium deposits so retained by it in interest-bearing securities may nevertheless deduct such part, but not the interest received on such securities. A mutual fire insurance company which has a guaranty capital is taxed like other mutual fire insurance companies. A stock fire insurance company, operated on the mutual plan to the extent of paying dividends to certain classes of policyholders, may make a return on the same basis as a mutual fire insurance company with respect to its business conducted on the mutual plan.*

3222 **Art. 573 [Art. 571]. Deductions Allowed Foreign Corporations.**—
324 Foreign corporations are allowed the same deductions from their
2300 gross income arising from sources within the United States as are allowed to domestic corporations, to the extent that such deductions are connected with such gross income, with the exception that the interest deductible is that proportion of so much of the entire interest paid on the corporate indebtedness as would be deductible if paid by a domestic corporation which the gross income from sources within the United States bears to the total gross income, and that full deduction may be made for taxes imposed by the United States or any of its possessions, or by any State, Territory or political subdivision thereof, except taxes for local benefits and income, war profits and excess profit taxes. A Canadian manufacturing corporation which sells part of its product in the United States and part in Canada should report its deductions for cost of manufacture, exclusive of interest paid on its indebtedness, in the same proportion as the quantity of its product sold in the United States bears to the total quantity sold. See section 214 (b) of the statute and article 271.

ITEMS NOT DEDUCTIBLE.

3223 **Art. 581. Items not Deductible.**—No deduction from gross in-
326 come may be made for any amounts paid out for new buildings
1944 or for permanent improvements or betterments made to increase the value of any property, or for any amounts expended in restoring property or in making good the exhaustion thereof for which an allowance for depreciation or depletion or other allowance is or has been made, or for any amounts paid for premiums on any life insurance policy covering the life of an officer or employee or of any person financially interested in the business of the corporation when the corporation is directly or indirectly a beneficiary under such policy. See section 215 of the statute and articles 291-294.

3223a Art. 582. **Capital Expenditures.**—*Expenses of the organization of*
1945 *a corporation, such as incorporation fees and attorneys' and accountants'*
2967 *charges, constitute investments of capital and are not deductible from gross income. See article* 818. *A holding company which guarantees dividends at a specified rate on the stock of a subsidiary corporation for the purpose of securing new capital for the subsidiary and increasing the value of its stock holdings in the subsidiary may not deduct amounts paid in carrying out this guaranty in computing its net income, but such payments may be added to the cost of its stock in the subsidiary. But see article* 868.

CREDITS ALLOWED.

3224 Art. 591. **Credits Allowed.**—After ascertaining the net income of
327 a domestic corporation it is allowed as credits against such net
2325 income before the application of the income tax rate the sum of $2,000, plus the amount of any war profits and excess profits tax assessed or to be assessed for the same taxable year, and plus the amount of interest not entirely exempt from tax received upon obligations of the United States and bonds of the War Finance Corporation. See section 213 (b) of the statute and articles 77-82. Consequently, in the case of corporations no income tax is imposed on any interest received upon obligations of the United States or bonds of the War Finance Corporation. A foreign corporation is allowed the same credits other than the sum of $2,000. *As to corporations with fiscal years beginning in* 1917 *see section* 205 *and article* 1623. *For the purpose of the war profits and excess profits tax a corporation is not entitled to these credits.* See also section 216 and articles 301-307.

PAYMENT OF TAX AT SOURCE.

3225 Art. 601. **Withholding in the Case of Nonresident Foreign Cor-**
332 **porations.**—With respect to payments to foreign corporations
572 not engaged in trade or business within the United States and not having any office or place of business therein, withholding is required of a tax of 2 per cent in the case of interest payable upon corporate bonds or other obligations containing a tax-free covenant clause, and of a tax of 10 per cent in the case of other fixed or determinable annual or periodical income, other than corporate dividends. See section 221 of the statute and articles 361-376. To enable debtors in the United States to distinguish between foreign corporations which have and those which have not any office or place of business in the United States, and also to enable such corporations as have an office or place of business in the United States to claim exemption from withholding the tax on bond interest or other income, a certificate stating that any such corporation has an office or place of business in the United States should be filed by it with the debtor.

CREDIT FOR TAXES.

3226 Art. 611. **Credit for Foreign Taxes.**—For the meaning of the terms
337 used in section 238 of the statute see section 1 and article 382. To
2332 secure such a credit a domestic corporation must pursue the same course as that prescribed for an individual by article 383, except that form 1118 is to be used for claiming credit and form 1119 for the bond, if a bond be required. For the redetermination of the tax, when a credit for such taxes has been rendered incorrect by later developments, see article

384, all of the provisions of which apply with equal force to a corporation taxpayer. For credit where taxes are paid by a foreign corporation controlled by a domestic corporation, see article 636. A claim for credit in such a case is also to be made on form 1118.

CORPORATION RETURNS.

3227 **Art. 621. Corporation Returns.**—Every corporation not expressly
343 exempt from tax and every personal service corporation must make a
1398 return of income, regardless of the amount of its net income. In the case of ordinary corporations the return shall be on form 1120. For returns of insurance companies see article 623; of personal service corporations see article 624; of foreign corporations see article 625; and of affiliated corporations see section 240 of the statute and articles 631-638. A corporation having an existence during any portion of a taxable year is required to make a return. A corporation which has received a charter, but has never perfected its organization, and which has transacted no business and has no income from any source, may upon presentation of the facts to the collector be relieved from the necessity of making a return so long as it remains in an unorganized condition. In the absence of a proper showing to the collector such a corporation will be required to make a return. A corporation which was dissolved in 1918 or 1919 prior to the enactment of the present statute is not relieved from the necessity of rendering returns thereunder for 1918 and for such portion of 1919 as elapsed before its dissolution. *See further section* 228 *of the statute and articles* 406, 407 *and* 451.

3228 **Art. 622. Returns by Receivers.**—Receivers, trustees in dissolu-
346 tion, trustees in bankruptcy, and assignees, operating the property
1429 or business of corporations, must make returns of income for such corporations on form 1120, covering each year or part[s] of *a* year[s] during which they are in control. Notwithstanding that the powers and functions of a corporation are suspended and that the property and business are for the time being in the custody of the receiver trustee or assignee, subject to the order of the court, such receiver, trustee or assignee stands in the place of the corporate officers and is required to perform all the duties and assume all the liabilities which would devolve upon the officers of the corporation were they in control. A receiver in charge of only part of the property of a corporation, however, as a receiver in mortgage foreclosure proceedings involving merely a small portion of its property, need not make a return of income. See articles 424 and 547.

3229 **Art. 623. Returns of Insurance Companies.**—Insurance compa-
2275 nies transacting business in the United States or deriving an income from sources therein are required to file returns of income. The return shall be on form 1120. [The returns of insurance companies must be rendered in conformity with the reports made for the same period to State insurance departments.] As an aid in auditing the returns, wherever possible a copy of the report to the State insurance department should be submitted with the return. Otherwise a *copy of* schedule *D*, *parts* 1, 3 *and* 4, *of the report* should be attached [thereto] *to the return*, showing the federal, State and municipal obligations from which the interest omitted from gross income was derived, and a copy of the complete report should be furnished as soon as ready for filing.

3230 **Art. 624. Returns of Personal Service Corporations.**—Every per-
343 sonal service corporation must make a return of income, regardless of the amount of its net income. The return shall be on form 1065 (revised). It shall be made for the taxable year of the personal service corporation; that is, for its annual accounting period (fiscal year or calendar year, as the case may be), regardless of the taxable years of its stockholders. See Sections 200, 212 and 218 of the statute and articles 1523-1532, 25, 26 and 328-335. If the personal service corporation makes any change in its accounting period it shall render its return in accordance with the provisions of section 226 of the statute and article 431. The return of a personal service corporation shall state specifically (*a*) the items of its gross income enumerated in section 213 of the statute; (*b*) the deductions enumerated in section 214 of the statute, other than the deduction provided in paragraph (11) of subdivision (a) of that section; (*c*) the amounts specified in subdivisions (a) and (b) of section 216 of the statute received by the personal service corporation; (*d*) the amount of any income, war profits and excess profits taxes of the personal service corporation paid during the taxable year to a foreign country or to any possession of the United States, and the amount of any such taxes accrued but not paid during the taxable year; (*e*) the amounts distributed by the corporation during its taxable year with the dates of distribution; (*f*) the names and addresses of the stockholders of the corporation at the close of its taxable year and their respective shares in such corporation; (*g*) such facts as tend to show whether or not the corporation is a personal service corporation; and (*h*) such other facts as are required by the form. A personal service corporation which makes a return for a fiscal year beginning in 1917 shall include therein all the facts required for the computation of income and excess profits taxes under Title I of the Revenue Act of 1916, as amended by the Revenue Act of 1917, and under Titles I and II of the Revenue Act of 1917. See sections 205 and 335 of the statute and articles 1621-1625 and 951.

3231 **Art. 625. Returns of Foreign Corporations.**—Every foreign cor-
345 poration having income from sources within the United States
2314 must make a return of income on form 1120. If such a corporation has no office or place of business here, but has a resident agent, he shall make the return. It is not necessary, however, for it to be required to make a return that the foreign corporation shall be engaged in business in this country or that it have any office, branch or agency in the United States. See articles 404, 550 *and* 573.

3232 **Art. 626. Returns for Fractional Part of Year.**—*In the case of a*
1479 *corporation making its first return of income on the basis of a fiscal year and in the case of a corporation changing its accounting period, whether from calendar year to fiscal year, from fiscal year to calendar year, or from one fiscal year to another fiscal year, a separate return for a fractional part of a year is required. See section* 226 *of the statute and article* 431. *In such a case the credit of* $2,000 *against net income allowed a domestic corporation shall be reduced to such proportion of the full credit as the number of months in the period for which the return is made bears to twelve months. See sections* 236 *and* 305 *and articles* 591 *and* 761. [*Former Art.* 626— *Use of prescribed forms, is now Art.* 407, ¶3017*a*.]

CONSOLIDATED RETURNS.

3233 **Art. 631. Affiliated Corporations.**—The provision of the statute
349 requiring affiliated corporations to file consolidated returns is based
1405 upon the principle of levying the tax according to the true net income and invested capital of a single business enterprise, even

though the business is operated through more than one corporation. Where one corporation owns the capital stock of another corporation or other corporations, or where the stock of two or more corporations is owned by the same interests, a situation results which is closely analogous to that of a business maintaining one or more branch establishments. In the latter case, because of the direct ownership of the property, the invested capital and net income of the branch form a part of the invested capital and net income of the entire organization. Where such branches or units of a business are owned and controlled through the medium of separate corporations, it is necessary to require a consolidated return in order that the invested capital and net income of the entire group may be accurately determined. Otherwise opportunity would be afforded for the evasion of taxation by the shifting of income through price fixing, charges for services and other means by which income could be arbitrarily assigned to one or another unit of the group. In other cases without a consolidated return excessive taxation might be imposed as a result of purely artificial conditions existing between corporations within a controlled group. See articles 785, 791, 802 and 864-869.

3234 **Art. 632. Consolidated Returns.**—Affiliated corporations, as defined in the statute and in article 633, are required to file consolidated returns on form 1120. The consolidated return shall be filed by the parent or principal *reporting* corporation in the office of the collector of the district in which it has its principal office. Each of the other affiliated corporations shall file in the office of the collector of its district form 1122, along with the several schedules indicated thereon. The parent or principal corporation filing a consolidated return shall include in such return a statement specifically setting forth (*a*) the name and address of each of the subsidiary or affiliated corporations included in such return, (*b*) the par value of the total outstanding capital stock of each of such corporations at the beginning of the taxable year, (*c*) the par value of such capital stock held by the parent corporation or by the same interests at the beginning of the taxable year, (*d*) in the case of affiliated corporations owned by the same interests, a list of the individuals or partnerships constituting such interests, with the percentage of the total outstanding stock of each affiliated corporation held by each of such individuals or partnerships during all of the taxable year, and (*e*) a schedule showing the proportionate amount of the total tax which it is agreed among them is to be assessed upon each affiliated corporation. *Foreign corporations and personal service corporations need not file consolidated returns. See article* 1524.

3235 **Art. 633. When Corporations are Affiliated.**—Corporations will be
354 deemed to be affiliated (*a*) when one *domestic* corporation owns
1410 directly or controls through closely affiliated interests or by a nominee or nominees substantially all the stock of the other or others, or (*b*) when substantially all the stock of two or more domestic corporations is owned or controlled by the same interests. The words "substantially all the stock" *cannot be interpreted as meaning any particular percentage, but must be construed according to the facts of the particular case* [shall be deemed to mean 95 per cent or more of the outstanding voting capital stock (not including stock in the treasury) at the beginning of and during the taxable year]. *The owning or controlling of* 95 *per cent or more of the outstanding voting capital stock (not including stock in the treasury) at the beginning of and during the taxable year will be deemed to constitute an affiliation within the meaning of the statute. Consolidated returns may, however, be required even though the stock ownership is*

less than 95 *per cent.* When the stock ownership *is less than* [falls below] 95 per cent, but [is] in excess of 50 per cent, a full disclosure of affiliations *should* [shall] be made, *showing all pertinent facts, including the stock owned in each subsidiary or affiliated corporation and the percentage of such stock owned to the total stock outstanding* [and if it appears that the taxes can not be equitably assessed in such cases on the basis of separate returns, consolidated returns may be required]. *Such statement should preferably be made in advance of filing the return with a request for instructions as to whether a consolidated return should be made. In any event such a statement should be filed as a part of the return.* The words "[by] the same interests" shall be deemed to mean the same individual or partnership or the same individuals or partnerships, but when the stock of two or more corporations is owned by two or more individuals or by two or more partnerships a consolidated return is not required unless the percentage of stock held by each individual or each partnership is substantially the same in each of the affiliated corporations.

3236 **Art. 634. Change in Ownership During Taxable Year.**—When one
355 corporation owns substantially all the stock of another corporation
1411 at the beginning of any taxable year, but during the taxable year sells all or a majority of such stock to outside interests not affiliated with it, or when one corporation during any taxable year acquires substantially all the capital stock of another corporation with which it was not previously affiliated, a full disclosure of the circumstances of such changes in ownership shall be submitted to the Commissioner. In accordance with the peculiar circumstances in each case the Commissioner may require separate or consolidated returns to be filed, to the end that the tax may be equitably assessed.

3237 **Art. 635. Corporation Deriving Chief Income from Government**
350 **Contracts.**—In the case of any affiliated corporation organized
1406 after August 1, 1914, and not a successor to a then existing business, 50 per cent or more of whose gross income consists of gains, profits, commissions or other income derived from a Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive, the net income and invested capital of such corporation shall be taken out of the consolidated net income and invested capital of the group of affiliated corporations and the corporation so segregated shall be separately assessed on the basis of its own invested capital and net income, the remainder of such affiliated group being assessed on the basis of the remaining consolidated invested capital and net income. *See section* 1 *of the statute and article* 1510.

3238 **Art. 636. Domestic Corporation Affiliated with Foreign Cor-**
356 **poration.**—A domestic corporation which owns a majority of the
1412 stock of a foreign corporation shall not be permitted or required to include the net income or invested capital of such foreign corporation in a consolidated return, but for the purpose of section 238 of the statute a domestic corporation which owns a majority of the voting stock of a foreign corporation shall be entitled to credit *its* [in respect of any] *income, war profits and excess profits taxes with any* income, war profits or excess profits taxes paid (but not including taxes accrued) by such foreign corporation during the taxable year to any foreign country or to any possession of the United States upon income derived from sources without the United States in an amount equal to the proportion which the amount of any dividends (not deductible under section 234) received by such domestic

corporation from such foreign corporation during the taxable year bears to the total taxable income of such foreign corporation upon or with respect to which such taxes were paid. But in no such case shall the amount of the credit for such taxes exceed the amount of such dividends (not deductible under section 234) received by such domestic corporation during the taxable year. A domestic corporation seeking such credit must comply with those provisions of subdivision (*a*) of article 383 which are applicable to credits for taxes already paid, except that in accordance with article 611 the form to be used is form 1118 instead of form 1116.

3239 **Art. 637. Consolidated Net Income of Affiliated Corporations.**—Subject to the provisions covering the determination of taxable net income of separate corporations, and subject further to the elimination of intercompany transactions, the consolidated taxable net income shall be the combined net income of the several corporations consolidated, except that the net income of corporations coming within the provisions of article 635 shall be *taken out* [excluded.] In respect of the statement of gross income and deductions and the several schedules required under form 1120, a corporation filing a consolidated return is required to prepare and file such statements and schedules in columnar form to the end that the details of the items of gross income and deductions for each corporation included in the consolidation may be readily audited.

3240 **Art. 638 Different Fiscal Years of Affiliated Corporations.**—In the
1427 case of all consolidated returns, consolidated invested capital must be computed as of the beginning of the taxable year of the parent or principal reporting company and consolidated income must be computed on the basis of its *taxable* [fiscal] year. Whenever the fiscal year of one or more subsidiary or other affiliated corporations differs from the fiscal year of the parent or principal corporation, the Commissioner should be fully advised by the taxpayer in order that provision may be made for assessing the tax in respect of the period prior to the beginning of the fiscal year of the parent or principal company. *See section 226 of the statute and article 431.*

TIME AND PLACE FOR FILING RETURNS.

3241 **Art. 651. Time and Place for Filing Returns.**—Returns of income
358 must be made on or before the fifteenth day of the third month fol-
1471 lowing the close of the fiscal or calendar year, as provided in section 227 of the statute and articles 441–447. A corporation going into liquidation during any taxable year may upon the completion of such liquidation prepare a return covering its income for the fractional part of the year during which it was engaged in business and may immediately file such return with the collector. *A corporation having an office or agency in the United States must make its return to the collector of the district in which is located its principal office or agency. Other corporations must make their returns to the collector at Baltimore. See also sections* 250 *and* 253 *of the statute and articles* 1001–1013 *and* 1041. [A corporation desiring an extension of time within which to file its return should submit to the collector before the time for filing the return a tentative return and estimate on form 1031 T, accompanied by a remittance of not less than one-fourth of the estimated amount of income and war profits and excess profits taxes for the taxable year. In such a case the collector may grant a reasonable extension of time for filing the complete return, not to exceed thirty days or, in the case of returns for 1918, not to exceed forty-five days after March 15, 1919. See also sections 250 and 253 of the statute and articles 1001–1003 and 1041.]

3242 [Art. 652. Last Due Date.—*Is now Art.* 447, ¶3028*a*.]

3243 **Art. 1800. Promulgation of Regulations.**—In pursuance of the
433 statute the foregoing regulations are hereby made and promulgated
2591 and all rulings inconsistent herewith are hereby revoked.

DANIEL C. ROPER,
Commissioner of Internal Revenue.

Approved: CARTER GLASS, *Secretary of the Treasury.*
(Preliminary edition not dated; Released: March 5, 1919.)
(Revised edition dated April 17, 1919; Released a few days later.)

3244 **Withholding at the New Rates. Liability of Debtors and of Credi-**
3003 **tors.**—Employers of nonresident aliens were not required in making payments prior to February twenty-five, nineteen nineteen, to withhold more than two per cent of such payments and as to such payments will not be held responsible for more than two per cent unless then actually withheld at a higher rate. This ruling does not affect the tax liability of the nonresident alien who will be liable for tax at the rates prescribed for nineteen eighteen and nineteen nineteen and should make returns accordingly. He is entitled to credit for the amount paid to the Government by withholding agent. (Telegram to The Corporation Trust Company, signed by Commissioner Daniel C. Roper and dated March 5, 1919.)

3245 **Modification of the Ruling Relative to Apportioning the Personal**
1140 **or Family Exemptions Because of Change in Marital or Family**
1141 **Status During the Year.**—The status of an Income Tax payer on
2971a December 31 will determine his personal exemption for 1918, as in previous years, according to a new ruling issued to-day by the Treasury Department.

The subdividing of personal or family exemptions to cover a person's changes in status during 1918 is abandoned. Pargaraph three of Section six of the instructions on the new forms for individual returns, is made void by the new ruling.

When claiming the personal or family exemption on his return, a taxpayer should be guided by the following schedule of lawful allowances.

If married and living with wife (or husband) on the last day of the year, the exemption allowed is $2,000. Any taxpayer who, though unmarried, supported in his household on December 31 one or more relatives who were dependent upon him, may claim the $2,000 exemption.

Single persons, also married persons who were living apart on December 31, and who have no dependents, may claim only $1,000 exemption.

Additional exemption of $200 is allowed for each person who was dependent upon the taxpayer on December 31 if the dependent is under 18 years of age or is mentally or physically incapable of self-support. (Official announcement by the Bureau of Internal Revenue, dated March 11, 1919.)

(T. D. 2797.)

3246 **Time of Payment of Tax where a Corporation has Filed a Return**
2339 **for a Fiscal Year Ending in 1918.**—If a corporation has before Febru-
3031 ary 25, 1919, filed a return for a fiscal year ending in 1918 and paid
3180a or become liable for a tax computed under the Revenue Act of 1917, and is subject to additional tax for the same period under the Revenue Act of 1918, the return covering such additional tax shall be filed at the same

time as returns of persons making returns for the calendar year 1918 are due under existing rulings, and payment of such additional tax is due in the same installments and at the same times as in the case of payments based on returns for the calendar year 1918. If no part of the tax for such fiscal year was due until after February 24, 1919, the whole amount of tax due, including tax due under the original return and additional tax due under the amended return, will be payable in the same installments and at the same times as in the case of payments based on returns for the calendar year 1918. (T. D. 2797, signed by Commissioner Daniel C. Roper, and dated March 11, 1919.)

(T. D. 2796.—Amended.)

3247 **Amendment to T. D. 2796.**—This Treasury Decision should be
3167 substituted for the previous mimeograph issue of T. D. 2796, the words and figures "September 8, 1916, and the Act of" having been inserted after the word "of" in the eighth line of the third paragraph [seventh line of ¶3167]. (T. D. 2796—Amended, signed by Commissioner Daniel C. Roper, and dated February 27, 1919.)

3248 **Computation of Discount and Interest for Taxation Purposes.**—
1792 The Commissioner of Internal Revenue has authorized the publication of the following letter written in response to an inquiry from a national bank with reference to the method of reporting discount and interest on time loans for taxation purposes:

"Receipt is acknowledged of your letter of February 8, 1919, in which you state:

'On January 1, 1918, we changed our method of handling discount and interest on time loans. Up to this time all discount and interest charged on loans had been credited directly to discount and interest, but at this date, the actual amount of discount and interest, which had been so credited and was still unearned, was ascertained, credited to unearned account on our books, and thereafter all discount and interest collected in advance was credited to this account, our discount earned receiving credit for each day's actual earnings.'

"You ask to be advised what course you should pursue in the preparation of your income and war-excess profits tax returns for the year 1918. The method of treating discount and interest on time loans adopted by you on

January 1, 1918, has been generally recognized as the correct method of computing such income, and the Comptroller of the Currency has suggested the adoption of this method by all national banks. The amount of income from discount and interest on time loans which you should report for the year 1918 is the amount of such income actually earned during that year, and as the amount of such income for the year 1917 and years prior thereto has been computed and reported upon a different method, amended returns should be filed showing the correct amount of such income for each year back to 1909, inclusive, or to the date of the organization of your bank, if it was organized subsequent to 1909." (Letter to a National Bank, signed by Commissioner Daniel C. Roper, and dated February 11, 1919. Reprinted from The Federal Reserve Bulletin for March, 1919.)

3249 **The Advisory Tax Board Membership.**—Commissioner Daniel C.
2652 Roper announced today his appointments to the new Advisory Tax Board of the Bureau of Internal Revenue. Five memberships are announced. The sixth membership has been reserved as a roving commission for experts who will be called in from time to time from various industries. The men named today are:

Dr. T. S. Adams, Professor of Political Economy of Yale University, and formerly of the Wisconsin Tax Commission.

J. E. Sterrett, of New York, Certified Public Accountant, and formerly President of the American Institute of Accountants.

Stuart W. Cramer, of Charlotte, North Carolina, engineer, contractor and cotton manufacturer; former President of the National Association of American Cotton Manufacturers.

L. F. Speer, former Deputy Commissioner, Bureau of Internal Revenue, Income Tax Division.

Fred T. Field, of Boston, Mass., expert tax lawyer, and formerly Assistant Attorney General of Massachusetts.

3250 The chairman of the new board of advisors will be Dr. Adams, who has been active in the Bureau's affairs for some time.

3251 Particular attention will be given to problems arising where differences of opinion exist between the taxpayers and the Bureau. Such differences occur not only with individuals, but also with groups and even with classes of industry.

3252 Formal hearings will be given to taxpayers in every case where the facts warrant, and it was stated today at the Revenue Bureau that the smallest individual or the most eminent legal counsel for the largest corporation shall find a hearing equally accessible. Commissioner Roper has already announced his policy "to employ every means available so that the scales of justice may be held evenly in deciding each case."

3253 The Board will be called upon to decide questions involving the general aspects of taxation and differentiation of economic activities, accounting, forms of organization, trade customs, industrial management, legal procedure and administration. Special studies will be made of such matters as they affect Federal taxation. (Official announcement from the Bureau of Internal Revenue, dated March 14, 1919.)

(T. D. 2804)

3254 **Extension of Time for Filing Returns of Partnerships Whose Fiscal**
1507 **Year Ended in 1918.**—By Treasury Decision 2796 the time for
3165 filing certain classes of returns which are not the basis for an assessment of tax was extended to May 15, 1919, and the time for filing returns of partnerships and corporations having a fiscal year ended on the last day of some month (other than December) in the year 1918, and which had secured extensions of time in which to file returns, such extensions not having expired, was further extended to March 15, 1919.

3255 In view of the fact that necessary forms are not yet available, a further extension to May 15, 1919, is hereby granted all such partnerships. Individual members of such partnerships, as in the case of partnerships filing on the basis of the calendar year, will be required to include in their individual returns their distributive shares of the earnings of such partnerships (ascertained or estimated) and pay at least one-fourth of the tax due on March 15th. (T. D. 2804, signed by Commissioner Daniel C. Roper, and dated March 13, 1919.)

(T. D. 2805.)

3256 **Amended Returns May be Accepted so that the Taxable Year of**
1405 **Affiliated Corporations will Coincide.**—In any case where an affiliated
3233 corporation has made its income tax return on the basis of a taxable year different from that on the basis of which a consolidated excess profits tax return in which it is included has been made under the provisions of Articles 77 [¶1415] and 78 [¶1417] of Regulations 41 and of T. D. 2662 [1418], an amended income tax return may be made on the basis of the same taxable year as the consolidated return, even though notice was not given within the time prescribed in Articles 211 to 215 [¶1488 to 1495], inclusive, of Regulations No. 33 (revised) or in Regulations 45 [¶2840]. In such a case an amended income tax return shall also be made for any unaccounted for portion of the corporation's taxable year.

3257 Collectors of Internal Revenue may accept amended returns made under the provisions of this Treasury Decision. (T. D. 2805, signed by Commissioner Daniel C. Roper and dated March 14, 1919.)

3258 **Forms for making returns by nonresident aliens.**—No 1040-B will
538 be issued for use of nonresident aliens. 1040 or 1040-A will be used.
1435 Instructions are now being prepared as to how these forms may be
3015 adapted for use of nonresident aliens. (Telegram to a subscriber,
3168 signed by Commissioner Daniel C. Roper, and dated March 14, 1919.)

3259 **International reciprocal personal specific exemption allowances.**—
537 Data regarding countries which impose income tax and permit credits
2972 to United States citizens not residing in such countries similar to credits provided in Section 216, Revenue Act of 1918, now being collected and will be issued in form of Treasury Decision (Telegram to a subscriber, signed by Commissioner Daniel C. Roper, and dated March 14, 1919.)

3260 **Specific Penalty will not be Asserted if Delinquent Returns are**
1605 **Filed by May 1.**—In view of the delay in the final passage of the
1471 Revenue Act of 1918 and the short period allowed for filing returns
3025 thereunder, it has been decided that if a return is filed on or before
3041 May 1, 1919, by an individual, partnership or corporation under
3165 the provisions of such Act, the specific penalty of $1,000 will not be asserted.

3261 Where returns of income are filed after the date mentioned above or where returns of information at the source are filed after May 15, 1919, the specific penalty will be asserted unless it can be shown that the delay was due to a reasonable cause, and offers in compromise will be accepted in the minimum amounts stated below:

Delinquent returns of income by individuals	$5.00
Delinquent returns of income by corporations	10.00
Delinquent returns of information	5.00

3262 Of course it must be borne in mind that the above does not relate to cases where there is evidence of wilful intent or hostility toward the administration of the law. Such cases will be taken care of in the same manner as heretofore.

3263 Cards, Form 7245A, prepared in the manner indicated in Mim. 1480, dated February 26, 1917, should accompany every original delinquent return filed after the dates mentioned above as the last dates for filing returns before the specific penalty will be asserted. (IT-Mim. 2077, signed by Commissioner Daniel C. Roper, and dated March 13, 1919.)

(*Decision.*)
(Act of October 3, 1913.)

A Certain Massachusetts Trust Held Not to be an Association Under the Act of October 3, 1913.

Supreme Court of the United States.

Alvah Crocker et al., Trustees, Petitioners, *vs.* John F. Malley, Collector of Internal Revenue.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[March 17, 1919.]

Mr. Justice Holmes delivered the opinion of the Court.

3264 This is an action to recover taxes paid under protest to the Collector
1689 of Internal Revenue by the petitioners, the plaintiffs. The taxes
3076 were assessed to the plaintiffs as a joint-stock association within the meaning of the Income Tax Act of October 3, 1913, c. 16, Section II, G. (a), 38 Stat. 114, 166, 172, and were levied in respect of dividends received from a corporation that itself was taxable upon its net income. The plaintiffs say that they were not an association but simply trustees, and subject only to the duties imposed upon fiduciaries by Section II, D. The Circuit Court of Appeals decided that the plaintiffs, together, it would seem, with those for whose benefit they held the property, were an association, and ordered judgment for the defendant, reversing the judgment of the District Court. 250 Fed. Rep. 817.

3265 The facts are these. A Maine paper manufacturing corporation with eight shareholders had its mills on the Nashua River in Massachusetts and owned outlying land to protect the river from pollution. In 1912 a corporation was formed in Massachusetts. The Maine corporation conveyed to it seven mills and let to it an eighth that was in process of construction, together with the outlying lands and tenements, on a long lease, receiving the stock of the Massachusetts corporation in return. The Maine corporation then transferred to the plaintiffs as trustees the fee of the property subject to lease, left the Massachusetts stock in their hands, and was dissolved. By the declaration of trust the plaintiffs declared that they held the real estate and all other property at any time received by them thereunder, subject to the provisions thereof, 'for the benefit of the *cestui que trusts* (who shall be trust beneficiaries only, without partnership, associate or other relation whatever *inter sese*)' upon trust to convert the same into money and distribute the net proceeds to the persons then holding the trustees' receipt certificates—the time of distribution being left to the discretion of the trustees, but not to be postponed beyond the end of twenty years after the death of specified persons then living. In the meantime the trustees were to have the powers of owners. They were to distribute what they determined to be fairly distributable net income according to the interests of the *cestui que trusts* but could apply any funds in their hands for the repair or development of the property held by them, or the acquisition of other property, pending conversion and distribution. The trust was explained to be because of the determination of the Maine corporation to dissolve without waiting for the final cash sale of its real estate and was declared to be for the benefit of the eight shareholders of the Maine Company who were to receive certificates subject to transfer and subdivision. Then followed a more detailed statement of the power of the trustees and provision for their compensation, not exceeding one per cent. of the gross income unless with the written consent of a majority in interest of the *cestui que trusts*. A similar consent was required for the filling of a vacancy among the trustees, and for a modification of the terms of the trust. In no other matter had the beneficiaries any control. The title of the trust was fixed for convenience as The Massachusetts [sic: in fact—Wachusett] Realty Trust.

3266 The declaration of trust on its face is an ordinary real estate trust of the kind familiar in Massachusetts, unless in the particular that the trustees' receipt provides that the holder has no interest in any specific property and that it purports only to declare the holder entitled to a certain fraction of the net proceeds of the property when converted into cash 'and meantime to income'. The only property expressly mentioned is the real estate not transferred to the Massachusetts corporation. Although the trustees in fact have held the stock of that corporation and have collected dividends upon it, their doing so is not contemplated in terms by the instrument. It does not appear very clearly that the eight Maine shareholders might not have demanded it had they been so minded. The function of the trustees is not to manage the mills but simply to collect the rents and income of such property as may be in their hands, with a large discretion in the application of it, but with a recognition that the receipt holders are entitled to it subject to the exercise of the powers confided to the trustees. In fact, the whole income, less taxes and similar expenses, has been paid over in due proportion to the holders of the receipts.

3267 There can be little doubt that in Massachusetts this arrangement would be held to create a trust and nothing more. 'The certificate holders . . . are in no way associated together nor is there any provision in the [instrument] for any meeting to be held by them. The only act which (under the [declaration of] trust) they can do is to consent to an alteration . . . of the trust' and to the other matters that we have

mentioned. They are confined to giving or withholding assent, and the giving or withholding it 'is not to be had in a meeting but is to be given by them individually'. 'The sole right of the *cestui que trust* is to have the property administered in their interest by the trustees, who are the masters, to receive income while the trust lasts, and their share of the corpus when the trust comes to an end'. *Williams* v. *Milton*, 215 Mass. 1, 10, 11; *ibid.* 8. The question is whether a different view is required by the terms of the present act. As by D. above referred to trustees and associations acting in a fiduciary capacity have the exemption that individual stockholders have from taxation upon dividends of a corporation that itself pays an income tax, and as the plaintiffs undeniably are trustees, if they are to be subjected to a double liability the language of the statute must make the intention clear. *Gould* v. *Gould*, 245 U. S. 151, 153 [¶2732]. *United States* v. *Isham*, 17 Wall. 496, 504.

3268 The requirement of G. (a) is that the normal tax thereinbefore imposed upon individuals shall be paid upon the entire net income accruing from all sources during the preceding year "to every corporation, joint-stock company or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerhips." The trust that has been described would not fall under any familiar conception of a joint-stock association, whether formed under a statute or not. *Smith* v. *Anderson*, 15 Ch. D. 247, 273, 274, 277, 282. *Eliot* v. *Freeman*, 220 U. S. 178, 186. If we assume that the words 'no matter how created or organized' apply to 'association' and not only to 'insurance company', still it would be a wide departure from normal usage to call the beneficiaries here a joint-stock association when they are admitted not to be partners in any sense, and when they have no joint action or interest and no control over the fund. On the other hand the trustees by themselves cannot be a joint-stock association within the meaning of the act unless all trustees with discretionary powers are such, and the special provision for trustees in D. is to be made meaningless. We perceive no ground for grouping the two—beneficiaries and trustees—together, in order to turn them into an association, by uniting their contrasted functions and powers, although they are in no proper sense associated. It seems to be an unnatural perversion of a well-known institution of the law.

3269 We do not see either that the result is affected by any technical analysis of the individual receipt holder's rights in the income received by the trustees. The description most in accord with what has been the practice would be that, as the receipts declare, the holders, until distribution of the capital, were entitled to the income of the fund subject to an unexercised power in the trustees in their reasonable discretion to divert it to the improvement of the capital. But even if it were said that the receipt holders were not entitled to the income as such until they got it, we do not discern how that would turn them into a joint-stock company. Moreover the receipt holders did get it and the question is what portion it was the duty of the trustees to withhold.

3270 We presume that the taxation of corporations and joint-stock companies upon dividends of corporations that themselves pay the income tax was for the purpose of discouraging combinations of the kind now in disfavor, by which a corporation holds controlling interests in other corporations which in their turn may control others, and so on, and in this way concentrates a power that is disapproved. There is nothing of that sort here. Upon the whole case we are of opinion that the statute fails to show a clear intent to subject the dividends on the Massachusetts corporation's stock to the extra tax imposed by G. (a).

3271 Our view upon the main question opens a second one upon which the Circuit Court of Appeals did not have to pass. The District Court while it found for the plaintiffs, ruled that the defendant was entitled to retain out of the sum received by him the amount of the tax that they should have paid as trustees. To this the plaintiffs took a cross writ of error to the Circuit Court of Appeals. There can be no question that although the plaintiffs escape the larger liability, there was probable cause for the defendant's act. The Commissioner of Internal Revenue rejected the plaintiff's claim, and the statute does not leave the matter clear. The recovery therefore will be from the United States. Rev. Sts. §989. The plaintiffs, as they themselves alleged in their claim, were the persons taxed, whether they were called an association or trustees. They were taxed too much. If the United States retains from the amount received by it the amount that it should have received, it cannot recover that sum in a subsequent suit.

Judgment of the Circuit Court of Appeals reversed.

Judgment of the District Court Affirmed.

(T. D. 2810.)

3272 1507 3026 **Extension of time in which taxpayers living or temporarily residing in the Territory of Alaska may, pursuant to the requirements of the Revenue Act of 1918, file returns of income for the year 1918 with the Collector of Internal Revenue for their respective districts.**—Because of the fact that it will be impossible to put into the hands of taxpayers residing or located in the Territory of Alaska the blank forms and instructions prescribed by this Department for the use of taxpayers in making returns pursuant to the new Revenue Act, in time for such returns to be filed on or before the due date—March 15, 1919—an extension of time to June 15, 1919, is hereby granted to all taxpayers living or residing temporarily in the Territory of Alaska. This extension shall not be construed as extending the payment of the second installment due June 15, 1919, and subsequent installments, therefore two installments will be due June 15, 1919. (T. D. 2810, signed by Commissioner Daniel C. Roper, and dated March 21, 1919.)

(T. D. 2811.)

3273 3259 **Preliminary edition of Regulations 45 amended (1) by the addition of a new Article numbered 307, concerning the allowance of credit for a personal exemption and for dependents to a non-resident alien individual, and (2) by the addition of a new Article numbered 316, concerning the allowance of credit to non-resident alien employes.**—The preliminary edition of Regulations 45 is hereby amended by the addition of two new Articles, Nos. 307 and 316, respectively, and reading as follows:

3274 537 2972 **Article 307, Credit for a personal exemption and for dependents in case of nonresident alien individual.**—(1) The following is an incomplete list of countries which either impose no income tax or in imposing an income tax allow the similar credit required by the Statute: Argentina; Brazil; Canada; Cuba; France; Italy; Mexico; Union of South Africa. (2) The following is an incomplete list of countries which in imposing an income tax do not allow the similar credit required by the Statute: Australia; Great Britain and Ireland; Japan; New Zealand. A nonresident alien individual who is a citizen or subject of any country on the first list is entitled

for the purpose of the normal tax to such credit for a personal exemption and for dependents as his family status may warrant. (See Articles 302-305). [¶2969–2972].) If he is a citizen or subject of any country on the second list he is not entitled to any such credit. If he is a citizen or subject of a country which is on neither list, then to secure credit for a personal exemption or for dependents or both he must prove to the satisfaction of the Commissioner that his country does not impose an income tax or that in imposing an income tax it grants the similar credit required by the Statute. (See Article 306, [There is no such, yet.])

3275 **Article 316. Allowance of credits to nonresident alien employee.—**
541 A nonresident alien employee, provided he is entitled under Section
2977 216 of the Statute to credit for a personal exemption or for dependents or both (see Articles 301–307, particularly the list of countries in Article 307, [¶3274]), may claim the benefit of such credit by filing with his employer Form 1115, duly filled out and executed under oath. On the filing of such a claim the employer shall examine it. If, on such examination, it appears that the claim is in due form, that it contains no statement which, to the knowledge of the employer, is untrue, and that such employee, on the face of the claim, is entitled to credit, and that such credit has not yet been exhausted, such employer need not, until such credit be in fact exhausted, withhold any tax from payments of salary or wages made to such employee. Every employer with whom affidavits of claim on Form 1115 are filed by employees shall preserve such affidavits until the following calendar year, and shall then file them, attached to his annual withholding return (see Article 367, [¶3002]) on Form 1042 (revised), with the Collector, on or before March 1st. In case, however, when the following calendar year arrives, such employer has no withholding to return, he shall forward all such affidavits of claim, so filed with him by employees, directly with the Commissioner (Sorting division), with a letter of transmittal, on or before March 1. In all other cases benefit of the credits allowed against net income for the purpose of the normal tax may not be received by a nonresident alien by filing a claim with the withholding agent, but only by claiming them upon filing a return of income as prescribed in Article 403 [¶3015]. (T. D. 2811, signed by Commissioner Daniel C. Roper, and dated March 22, 1919.)

3276 **Substantial Loss Because of Material Reduction of Value of Inventory**
1119 **for taxable year 1918.**—Referring to Subsection 14 of Section 234,
2215 new Revenue Act. Will loss resulting from sale consist of inventory
2963 value at close of taxable year, plus selling expenses, less selling price? Or will it consist only of difference between inventory value and selling price? Will loss resulting from fall in market value of goods still on hand consist of difference between inventory value at close of taxable year and market value at time of filing claim. (Answer.) Your telegram, February 22. Losses deductible under Section 234 consist of decrease in value of goods inventoried as evidenced by sale or otherwise and do not include selling expenses deductible during taxable year in which sale is made. Loss due to decline in market value of goods on hand is difference between inventory value at end of taxable year and market value at time of filing claim. (Telegram to the Department from E. G. Shorrock & Co., Seattle, Washington, and the reply thereto signed by Commissioner Daniel C. Roper, and dated March 3, 1919.)

3277 **Manner of Determining Amount of Exempt Interest From Liberty**
975 **Bond Holdings.**—Referring K (b) Form 1040, client has $30,000
2869 Table 13 (d), column 6, and still owns them; also $100,000 (b) column 6, made up $50,000 Second converted into Thirds from which $2,062.50 interest was received and $50,000 Thirds from which $744.90 interest was received. Please wire me collect, Pasadena, Central Building, if allowed exemption of $50,000 can be claimed against the $50,000 Second Liberty converted into Thirds or whether only $5,000 can be claimed against Second Liberty converted into Thirds and remaining $45,000 claimed against balance of $95,000 of the two issues. If latter is the case would taxable interest be represented by fifty ninety-fifths of total interest received from the two issues less interest on $5,000 Second Liberty converted into Thirds. (Answer.) Your telegram March 7. Exemption may be claimed on interest received from $50,000 principal of Second loan bonds converted into Thirds. (Telegram from Frederick J. Winston, Pasadena, Cal., and the reply thereto signed by Commissioner Daniel C. Roper, and dated March 12, 1919.)

3278 **Manner of Determining Amount of Exempt Interest From Liberty**
975 **Bond Holdings.**—Receipt is acknowledged of your letter of March 1,
2869 1919, requesting information as to the exemption which may be
3277 claimed by an individual against interest received on Liberty Bonds held under the following conditions:

$100,000 1st Liberty Loan 3½% Bonds, converted into 4¼% Bonds issued May 9, 1918, upon which the individual received	$2,125.00
$100,000 3rd Liberty Loan 4¼% Bonds, issued May 9, 1918, upon which he received	2,125.00
$30,000 4th Liberty Loan 4¼% Bonds, upon which he received no interest	.....

3279 In reply you are advised that an individual is exempt from normal income tax upon all interest received on Liberty Loan Bonds. If the individual in question held at the date of filing his return for 1918 the $30,000 4th Liberty Loan 4¼% Bonds originally subscribed for by him, he will be entitled to exemption from surtax upon the interest received on one and one-half (1½) times this amount, or $45,000, which may be applied against his holdings of First Liberty Loan 3½% Bonds converted into 4¼% Bonds, and the Third Liberty Loan 4¼% Bonds. In addition to this he will be allowed exemption from tax upon $5,000 Liberty Loan Bonds, which is provided for in ¶7 of the Second Liberty Loan Act, making a total exemption from tax of the interest received upon $50,000 of the $200,000 Bonds of the First and Third series above mentioned.

3280 The taxpayer will, therefore, be subject to surtax upon $3,187.50, the interest received on $150,000 worth of his First Liberty Loan 3½% Bonds converted into 4¼% Bonds issued May 9, 1918, and his Third Liberty Loan 4¼% Bonds issued on the same date. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated March 20, 1919.)

(T. D. 2812.)

3281 **Correction in Form 1120.**—Attention is directed to an error in the title of Schedule K, Form 1120, "Corporation Income Profits Tax Return" (Supplementary Page 41). The title of this schedule reads "Changes in invested capital from end of pre-war period to beginning of taxable year not shown in Schedule *E*." It should read "Changes in invested capital from end of pre-war period to beginning of taxable year not shown in Schedule *D*." (T. D. 2812, signed by Commissioner Daniel C. Roper, and dated March 22, 1919.)

3282 **Old ownership certificates acceptable until May 1 or June 1, 1919.**
650 —Department will accept all ownership certificates on old form
2999 already filed by owners of bonds covering interest on bonds domestic
3000 corporation or foreign items. If not filed old certificates will be
3060 accepted from bondholders within continental limits of the United States until May 1, 1919, and from bondholders outside the United States until June 1, 1919. (Telegram to Chas. H. Hubbell, First National Bank, Cleveland, Ohio, signed by Commissioner Daniel C. Roper, and dated March 28, 1919.)

3283 **Releasing the two per cent. tax withheld against nonresident foreign**
3003 **corporations on dividends.**—Receipt is acknowledged of your letter dated March 11, 1919, requesting information in regard to releasing the 2% tax withheld on account of dividends paid by you to nonresident alien corporations during the year 1918. ¶In reply you are advised that you should release the amount withheld, and pay same to the respective nonresident alien corporations from whom it was withheld, and send a statement of the individual amounts released to the Commissioner of Internal Revenue, Sorting Division, Washington, D. C. (Letter to Bonbright & Company, New York, N. Y., signed by J. H. Callan, Assistant to the Commissioner, and dated March 24, 1919.)

3284 **Manner of determining amount of exempt interest from Liberty**
975 **Bond holdings.**—Referring to our letter March 9 and your tele-
2869 graphic reply dated March 15, also to Instructions K (b) at bottom
3278 of page 2, Form 1040, particularly to that portion of paragraph 2 reading "Periods during which your holdings of that class of obligations remained unchanged." Are we to understand that taxpayers are deemed to have owned bonds of various classes during the periods covered by coupons clipped from such classes of bonds? Example. Taxpayer bought First 3½s in 1917 and has bought no bonds since. On May 15, 1918, he converted his 3½s into First 4s. In this case are we to understand that so far as taxation is concerned the taxpayer owned 3½s until December 15, 1917, and 4s thereafter? Are we to understand that from January 1 until December 31 was the period in 1918 during which holdings of 4% bonds remained unchanged? Please wire reply. (Answer.) Answering your telegram March 17. Individual who on May 15, 1918, converted First Liberty 3½% Bonds into First Liberty 4s held First Liberty 4s for entire year 1918 for purposes of income tax. Any amount paid at time of conversion for adjustment of interest to be subtracted from amount received at first interest payment after conversion and only the difference between amount received and amount paid to be included in return of taxpayer. (Telegram from Chas. H. Hubbell, First National Bank, Cleveland, Ohio, and the answer thereto, signed by Commissioner Daniel C. Roper, and dated March 25, 1919.)

3285 **The 10% Undistributed Profits Tax, Being Considered an Income**
2037 **Tax, Is Not Deductible.**—Replying to your communication of March
2897 14, 1919, you are informed that the 10% tax which was imposed on corporations' undistributed net income by Section 10(b) of the Revenue Act of September 8, 1916, as amended by the Revenue Act of October 3, 1917, is not an allowable deduction from the gross income of a corporation shown on an income tax return. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated April 1, 1919.)

(T. D. 2815.)

3286 **Returns of Income By or For Nonresident Alien Individuals.**—
538 Nonresident alien individuals or their authorized agents should
543 use form 1040 (revised) or 1040 A (revised) in making returns of
1435 income derived from sources within the United States, regardless
3015 of amount, unless the tax on such income has been fully paid at
3168 the source. If a nonresident alien individual is not liable for any
3258 tax which has been withheld at the source, no refund of such tax will be permitted unless such a return is filed and a statement is attached thereto indicating the amounts of tax withheld and the names and post office addresses of all withholding agents. Unless a nonresident alien individual shall render a return of income, the tax will be collected on the basis of his gross income (not his net income) from sources within the United States.

3287 In filling out form 1040 (revised) or form 1040 A (revised) the income reported in each case should be the income from sources within the United States, as defined in article 91 [¶2876] of Regulations 45, and the deductions taken should be those allowed under article 271 [¶2964] of the Regulations. In items 28 and 33 of form 1040 (revised) and in items O and P of form 1040 A (revised) the tax must be computed at 12 per cent instead of 6 per cent. No credit may be taken for item 40 in form 1040 (revised).

3288 A nonresident alien individual, similarly to a citizen or resident,
3259 is entitled for the purpose of the normal tax to credit dividends
3273 from domestic or resident foreign corporations, interest on obligations of the United States, a personal exemption, and $200 for each dependent, except that if he is a citizen or subject of a country which imposes an income tax a personal exemption or credit for dependents is allowed him "only if such country allows a similar credit to citizens of the United States not residing in such country." "If such country allows a similar credit" means if such country in imposing its income tax allows a personal exemption or a credit for dependents, as the case may be, and allows it without discrimination to citizens of the United States not residing in such country. To satisfy the requirement of a similar credit it is not necessary that the personal exemption or credit for dependents, as the case may be, should be the same as that allowed by the United States statute. For countries that allow and do not allow similar credits see T. D. 2811 of March 22, 1919 [¶3273].

3289 See generally Title II of the Revenue Act of 1918 and Regulations 45, and particularly articles 2, 91, 92, 271, 305, 311-315, 361-372, 403, 443, 1121, 1131 and 1132. [See blue sheet facing page 300.] (T. D. 2815, signed by Commissioner Daniel C. Roper, and dated April 2, 1919.)

(T. D. 2816.)

3290 **A Certain Massachusetts Trust Held not to be an Association under**
3264 **the Act of Oct. 3, 1913.**—The appended decision of the United States Supreme Court in the case of Alvah Crocker et al., Trustees, v. John F. Malley, Collector of Internal Revenue [for the decision in full, see ¶3264], is published for the information of internal revenue officers and others concerned. (T. D. 2816, signed by Commissioner Daniel C. Roper, and dated April 2, 1919.)

3291 **Substantial Loss Because of Material Reduction of Value of Inventory**
1119 **for Taxable Year 1918.**—Loss in inventory see Article 261, Regulations
2215 45. Regulation states that after one claim has been allowed no
2963 further claim can be considered. Does this mean that if after claim is made for loss on certain lines of goods losses should be sustained on other lines of goods no claim in respect of those other lines will be considered? In other words must the first claim cover all loss on all the inventory? Kindly wire. (Answer.) Your telegram April 1. Corporations may file claim for abatement based on revaluation of inventories at time of filing return or any time thereafter during 1919. This does not preclude corporation from filing amended claim during 1919, but after one claim has been allowed no further claim may be made. If any part of the claim is disallowed, the remainder of tax shall on notice and demand be paid by the taxpayer to the Collector, with interest at the rate of one percentum per month from the time the tax would have been due had no such claim been filed. (Telegram from E. G. Shorrock & Co., Seattle, Washington, and the reply thereto signed by Commissioner Daniel C. Roper, and dated April 3, 1919.)

3292 **Status of Undistributed Profits, Unduly Accumulated, if Invested**
746 **in United States Bonds.**—In reply to your letter of March 20, 1919,
2995 you are advised that any corporation which permits its gains and profits to accumulate for the purpose of preventing the imposition of the surtax upon its stockholders and members will be subject to the provisions of Section 220, of the Revenue Act of 1918, regardless of whether or not such gains and profits are invested by the corporation in obligations of the United States. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated April 9, 1919.)

3293 **Interrogatories on Ownership Certificates to be Answered Fully.**—
2999 All information called for on ownership certificates must be supplied.
669 Debtor corporation or its authorized agent will be held responsible for proper execution of certificates but not as to misstatements by bond owners. Payment of bond interest should be refused unless data is complete. Information necessary for efficient administration of Revenue Act. (Telegram to the Southern Pacific Company, New York, N. Y., signed by Commissioner Daniel C. Roper, and dated April 7, 1919.)

3294 **Consolidated Returns: Public Service Corporations not Excepted.**—
1405 Reply your wire April second. Requirements Treasury Decision
1418 2662 that public service corporations subject to regulation by Public
3233 Service Commission should not make consolidated return not applicable under Revenue Act of 1918. (Telegram to Miller, Mack & Fairchild, Milwaukee, Wis., signed by Commissioner Daniel C. Roper, dated April 9, 1919.)

3295 **Consolidated Returns not Permitted: Stock of Two Corporations**
1411 **Owned "by the Same Interests," the Percentage of Holdings in the**
3235 **Two Companies Differing.**—[An example of a ruling in a specific case.] Receipt is acknowledged of your letter dated March 31, 1919, to which you attach a letter from ———. ¶It appears that there are two corporations, one owning and operating properties in the Hawaiian Islands and the other owning and leasing various pieces of property in Cali-

fornia. The stock of the California corporation is held by the members of one family, four male members of the family each owning five-twenty-fourths and a sister one-sixth of the entire stock. The Hawaiian corporation is held by the same family principally, with the exception that one-sixth of the stock is held by each of the four male members afore-mentioned, one-sixth by the sister afore-mentioned and one-sixth by the husband of a deceased sister to the other stockholders. ¶The affairs and operations of the two corporations have in the past been, and are now being, actively conducted by and in the control of the male members of the family. The two corporations, it is stated, are in purpose and effect only one enterprise. ¶In accordance with regulations No. 45, where substantially all of the stock of two or more corporations is held by the same interests, such holdings must be in substantially the same proportions in order to require a consolidated return. It is therefore held that these corporations should file separate returns. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated April 11, 1919.)

3296 **Interest on Food Administration Grain Corporation Notes.**—Interest
975 on Food Administration Grain Corporation notes is not exempt from
2868 income and excess profits taxes. (Telegram to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated April 13, 1919.)

3297 **Exempt Status of Interest on Victory Liberty Loan Notes.**—The
3169 Victory Liberty Loan, which will be offered for popular subscription on April 21, will take the form of 4¾% three/four year Convertible Gold Notes of the United States, exempt from State and local taxes, except estate and inheritance taxes, and from normal Federal income taxes [¶3173]. The Notes will be convertible, at the option of the holder, throughout their life into 3¾% three/four year Convertible Gold Notes of the United States exempt from all Federal, State and local taxes, except estate and inheritance taxes [¶3172]. In like manner the 3¾% Notes will be convertible into the 4¾% Notes.

3298 The amount of the issue will be $4,500,000,000, which, with the deferred installments of income and profits taxes payable, in respect to last year's income and profits, during the period covered by the maturity dates of Terasury certificates of indebtedness now outstanding, will fully provide for the retirement of such certificates. The issue will be limited to $4,500,000,000 except as it may be necessary to increase or decrease the amount to facilitate allotment. Oversubscripitons will be rejected and allotments made on a graduated scale similar in its general plan to that adopted in connection with the First Liberty Loan. Allotment will be made in full on subscriptions up to and including $10,000.

3299 The Notes of both series will be dated and bear interest from May 20, 1919, and will mature on May 20, 1923. Interest will be payable on December 15, 1919, and thereafter semi-annually on June 15 and December 15, and at maturity. All or any of the Notes may be redeemed before maturity at the option of the United States on June 15 or December 15, 1922, at par and accrued interest. (Official statement by Secretary of the Treasury Carter Glass, April 14, 1919.)

(It: Mim. 2101.)

3300 **Extension of Time for Completing Corporate Returns and for Filing**
3158 **Certain Returns not the Basis for Assessment of Tax.**—In view of
3165 the short time between the date on which forms were available and
3167 the due date (March 15), of calendar year returns required under the Revenue Act of 1918, notice was given through the public press and otherwise that tentative returns (Forms 1031–T and 1040–T), accompanied by a first installment of one-fourth of the estimated tax due would be accepted on that date, and that in such cases forty-five days would be given in which to file complete returns, but that interest at the rate of one-half of 1% per month upon the amounts by which such installment payments fall short of the correct amounts would be collected.

3301 In the case of corporations which filed Form 1031-T on or before March 15, a further extension, where needed, to June 15, 1919, in which to file complete returns on Form 1120 is hereby granted, but all such corporations will be required to pay on or before June 15 a sum sufficient, with the amount paid on March 15, to equal one-half the tax due as shown by the return on Form 1120, together with interest at the rate of one-half of 1% per month on any defficiency in the first installment.

3302 It is not deemed necessary to grant an extension of time beyond the forty-five days originally granted for the completion of personal returns, except on special request therefor for sufficient reasons given, but the above ruling as to interest on deficient installments applies to them.

3303 An extension of time in which to file returns of corporations making returns for a fiscal year ended either on January 31 or February 28, 1919, will on request be granted to June 15, 1919, but such extension shall not operate to extend the due date of any installment of tax after the first. Interest at the rate of one-half of 1% per month will be collected from the time the first installment would have been payable if the extension had not been requested.

3304 The time for filing returns of information (Forms 1096 and 1099) fiduciary returns (Form 1041), withholding returns (Form 1042, accompanied by Form 1098 and Form 1013), returns of partnerships and personal service corporations required to file returns on a calendar year basis, and all other returns required under the income tax and profits tax provisions of the law which are not the basis for the assessment of the tax, is also extended to June 15, 1919. (It.: Mim. 2101, signed by Commissioner Daniel C. Roper, and dated April 14, 1919.)

3305 **Extension of Time to June 15, 1919, Applies Equally to Certain**
3167 **Fiscal Year Corporations.**—Replying your telegram April 15, general
3300 extension to June 15 applies to corporations with fiscal years ended in 1918 which filed tentative return on or before March 15 and need additional time for completion of return. (Telegram to Kennedy M. Thompson, New York, N. Y., signed by Acting Commissioner J. H. Callan, and dated April 18, 1919.)

3306 **Consolidated Returns: Public Service Corporations, Including**
1418 **Railroads, Not Excepted.**—Receipt is acknowledged of your letter,
3233 dated April 8, 1919, in which you state:
3294 "In connection with the Revenue Act of 1917, Title II, the Bureau of Internal Revenue made provision for consolidated returns for War Excess Profits Tax purposes.

"Treasury Decision 2662 [¶1418], issued March 6, 1918, provided in 'B' that railroads, gas, electric, water and other public service corporations, when operated independently and not physically connected or merged—particularly when situated in different jurisdictions and subject to regulation by Public Service Commission—will not be required or permitted, without special permission obtained in advance, to make a consolidated return.

"The Revenue Act of 1918, Section 240, makes statutory provision for consolidated returns, both for Income and for War Profits and Excess Profits Tax purposes, setting forth quite definitely just what shall be considered to be affiliated corporations. The amplifying Regulations of the Department as contained in Regulations No. 45, Part II-A, contain nothing indicating that the rule relating to public service corporations laid down by the Department in connection with the Revenue Act of 1917 will be held to apply to the Revenue Act of 1918, Section 240.

"We shall appreciate word from the Department as to whether or not public service corporations which otherwise would be deemed to be affiliated corporations are to be taken out of that class because of the fact that they are public service corporations and otherwise meet the conditions outlined in Treasury Decision 2662."

3307 In reply you are advised that subdivision (b) [¶1420] of Treasury Decision 2662 issued March 6, 1918, in connection with the Revenue Act of October 3, 1917, does not apply to the Revenue Act of 1918. In other words, public service corporations which otherwise would be deemed to be affiliated corporations are *not* to be taken out of that class because of the fact that they are public service corporations and otherwise meet the conditions outlined in Treasury Decision 2662. (Letter to The Corporation Trust Company, signed by Acting Commissioner J. H. Callan, and dated April 17, 1919.)

3308 **Extension to June 15 is a Blanket Extension.**—Comment: To
3300 remove any possible doubt we have requested and have received
3305 official word that a further extension of time to June 15, 1919, for filing complete return on Form 1120, is granted to any corporation, calendar or 1918 fiscal, that filed a tentative return (Form 1031T) on or before March 15, 1919, and that such corporation need not make application for such extension, the extension being automatic and universal. The Government naturally expects that corporations will file their returns as soon as conditions warrant.—The Corporation Trust Company, April 21, 1919.

3309 **Claims for Refund may be Filed with the Commissioner Direct.**—
2514 I have been advised by the Claim Department of your office that
2526 Claims for Refund should be sent direct to Washington provided
3048 there is attached thereto the actual receipt of the collector. On the other hand I note that Form 46, Revised March, 1918, has printed on the face of it:

"Important"

"This claim should be forwarded to the Collector of Internal Revenue to whom the tax was paid and must be accompanied by Collector's receipt therefor."

3310 (Answer.) Replying to your letter of March 22, 1919, you are advised that claims for refund may be forwarded direct to the Commissioner of Internal Revenue, Claims Division, Income Tax. (Letter from H. C. Hopson, New York, N. Y., and the reply thereto, signed by J. H. Callan, Assistant to the Commissioner, and dated March 29, 1919.)

3311 **Interest on Victory Liberty Loan 4¾% Notes Exempt from Income**
3169 **Tax on Corporations.**—[See 7th word, 5th line of ¶3297.] In answer
3297 to inquiries the Treasury Department to-day stated that the interest on the 4¾ per cent notes of the Victory Liberty Loan is exempt from the income tax on corporations, as well as from the normal Federal income tax on individuals. The 4¾ per cent. notes are exempt, under the terms of the Department Circular offering the Victory Liberty Loan for subscription, "both as to principal and interest, from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations." (Official announcement by the Treasury Department, April 23, 1919.)

3312 **Extension of Time for Filing Returns by Corporations whose Busi-**
1533 **ness is Transacted and whose Books are Kept, Abroad.**—Replying
3027 your telegram April 14, advise that Article 443 [now Art. 445] Regulations 45, relative extensions, applicable in case of domestic corporation whose records kept and business transacted abroad. (Telegram to H. C. Hopson, New York, N. Y., signed by Acting Commissioner J. H. Callan, and dated April 19, 1919.)

3313 **Compensation as Special Counsel, Received from a Municipality,**
1013 **is not Exempt Income.**—A counsellor at law is engaged by a munici-
2875b pality as special counsel, to act in connection with the regular City Attorney in handling a certain piece of litigation. Is he regarded as an officer or employee of a political subdivision of a state, so that his compensation for his services is not taxable under Article 71 of Regulations 45, sentence 2 [now Art. 85]? (Answer.) In reply to the first question, you are advised that under the ruling of this office, the compensation paid by a State to "special counsel," such as described above, is taxable income, and not exempt from income tax. (Part of letter from Collins & Corbin, Jersey City, N. J., and the answer thereto, signed by J. H. Callan, Assistant to the Commissioner, and dated April 15, 1919.)

3314 Interest, on Accounts Current and on Deposits, Accruing to Non-
553 **resident Alien Individuals and Foreign Partnerships: Withholding**
598 **Liability of Debtors.**—This office acknowledges receipt of your letter
2996a dated March 17, 1919, in which you request information as to whether commission merchants, private bankers, and others are required under Section 221 (a) of the Revenue Act of 1918, to withhold any part of interest accruing on mercantile accounts current, or upon moneys held on deposit, to nonresident alien individuals or foreign partnerships, if the principal amounts so due, as well as the interest, are at all times subject to call, and payable on demand. ¶In reply you are advised that interest upon deposits or accounts current, accruing on the books of citizens or residents of the United States, domestic partnerships or corporations is subject to the deduction of the tax at the source, only when the recipient is a nonresident alien individual. The amount to be deducted is 8% of the interest credited on the books of the debtor, at the time of crediting same. Such tax as is withheld should be retained by the withholding agent until the end of the calendar year and remitted to the Collector of Internal Revenue, accompanied by a return on Form 1042 in the usual manner. (Letter to Hughes, Rounds, Schurman & Dwight, New York, N. Y., signed by J. H. Callan, Assistant to the Commissioner, and dated April 22, 1919.)

3315 Consolidated Returns: Two Domestic Corporations, the one owning
1410 **a Foreign Corporation, and the other Owned by that Foreign Cor-**
3235 **poration.**—Receipt is acknowledged of your letter dated April 11,
3238 1919, in which you state: "A client of mine, a New Jersey Corporation owns all of the outstanding stock in a foreign corporation, which in turn owns all of the outstanding stock in a New York Corporation. Although under Article 636 [¶3238] of Regulations No. 45 relating to the Income Tax a domestic corporation is not required or permitted to file a consolidated return with a foreign corporation, it seems to me that the New Jersey and New York Corporations above-mentioned are affiliated as that term is defined in Article 633 [¶3235], and that, on that account the New Jersey Corporation should file a consolidated return for both, under the provisions of Section 240 of the Revenue Act. ¶Kindly advise me at your earliest convenience whether in the opinion of your office I am correct in this interpretation of the law."

In reply you are advised that in accordance with Section 240 of the Revenue Act of 1918 it will be necessary for the New Jersey Corporation and the New York Corporation above-mentioned to file a consolidated return, excluding the foreign corporation. (Letter to a subscriber, signed by Acting Deputy Commissioner P. S. Talbert, and dated April 23, 1919.)

3316 Old Ownership Certificates Acceptable Covering Interest Payments
3282 **due May 1, 1919.**—Replying your telephone inquiry to-day old forms ownership certificates filed with respect to interest payments, due May 1, 1919, will be accepted by this office. (Telegram to M. F. Frey, Guaranty Trust Company, New York, N. Y., signed by Commissioner Daniel C. Roper, and dated April 29, 1919.)

3317 Installment Sales: Default and Inability to Repossess.—Your
2849 telegram April 23. When vendee defaults in installment payments and vendor is unable to recover personal property sold, the vendor should report as loss on the return for that year the difference between the total amount actually received and the cost plus amounts returned as profits from sale during former years. (Telegram to Greenbaum, Wolff & Ernst, New York, N. Y., signed by Commissioner Daniel C. Roper, and dated April 26, 1919.)

3318 **Withholding at the Source on Bond Interest, Tax-Free and Otherwise.**—Receipt is acknowledged of your letter dated March 18, 1919, containing several inquiries which are repeated and answered in the order set forth in your letter:

* * * * * * * *

3319 553 572 2996 "At what rate is the tax to be actually deducted from coupons paid to non-resident aliens, nonresident corporations, and nonresident partnerships if the bonds are not tax-free?" (Answer.) Such interest is subject to withholding at the rate of 8% in the case of non-resident alien individuals and 10% in the case of non-resident alien corporations. No tax is required to be withheld from interest when the bonds in question are owned by a non-resident alien partnership.

3320 608 609 610 2996 "At what rate is the tax to be actually deducted from coupons paid to non-resident aliens, nonresident corporations, and nonresident partnerships if the bonds are tax-free?" (Answer.) The normal tax of 2% is required to be withheld in such cases.

3321 602 612 2996 3001a "At what rate is the tax to be actually deducted from coupons when not accompanied by an ownership certificate, and the owner is unknown?" (Answer.) When coupons are presented for collection unaccompanied by an ownership certificate, the normal tax of 2% is required to be withheld if the bonds contain a tax-free covenant clause and the normal tax of 8% if the bonds do not contain such clause. (Part of letter to Mississippi Valley Trust Company, St. Louis, Mo., signed by Acting Commissioner J. H. Callan, and dated April 18, 1919.)

3322 2841 **Taxes, on Profits on Sale of Property, Paid by Vendee for the Vendor.**—A vendee of a business agrees that in addition to the purchase price of the business he will pay the income and excess profit taxes of the vendor arising from the sale of said business. Query. Does the payment of the said taxes by the vendee constitute income to the vendor which the vendor would have to report on his income tax statement and pay a tax thereon? As extremely urgent please reply by telegram as promptly as possible. (Answer.) Your telegram April 30. Income, excess profits and war profits taxes paid by vendee for vendor on profits from sale of property to vendee constitute additional taxable income to vendor. (Telegram of inquiry from The Corporation Trust Company, and the reply thereto signed by Commissioner Daniel C. Roper, and dated May 2, 1919.)

3323 3282 3316 **Continued Use of Old Ownership Certificates With Respect to Interest Due on or Prior to September 1 and October 1, 1919.**—Pending modification of ownership certificates revised February, 1919, old forms of ownership certificates may be accepted with respect to interest due on and prior to September 1, 1919, when received from continental United States and may be accepted with respect to interest due on and prior to October 1, 1919, when received from abroad. (Official announcement from the Bureau of Internal Revenue, May 3, 1919.)

3324 **Credits to Nonresident Aliens, Citizens of Countries which in Imposing Income Taxes Levy no Income Taxes on United States Citizens not Residing Therein.**—Reference is made to your letter of March 22, 1919, in which you refer to Treasury Decision 2811 [¶3273] and ask to be advised concerning the application of the ruling contained therein in cases where an individual is a citzien or subject of a country which imposes an income tax but which tax does not apply to nonresident aliens. ¶In reply you are advised that a citizen or subject of a country which imposes an income tax but does not levy a tax on income derived from such country by citizens of the United States not residing therein is permitted to claim the credits provided for in paragraphs (c) and (d), Section 216 of the Revenue Act of 1918 in preparing a return of income derived from sources within the United States. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated May 1, 1919.)

537 2962a 3274

(T. D. 2836.)

3325 **Tax Exemptions of Liberty Bonds and Victory Notes.**—The appended circular, issued under date of April 23, 1919, with reference to the tax exemptions of Liberty Bonds and Victory Notes, is published for the information of internal-revenue officers and others concerned. (T. D. 2836, signed by Commissioner Daniel C. Roper, and dated May 7, 1919.)

965 2868 3169 3297 3311

3326 **Tax Exemptions of Liberty Bonds and Victory Notes.**—Liberty bonds and Victory notes issued under authority of the acts of Congress approved April 24, 1917, September 24, 1917, April 4, 1918, July 9, 1918, September 24, 1918, and March 3, 1919, are entitled, respectively, to the exemptions from taxation set forth in said acts, from which the statements in this circular are summarized and to which they are subject.

I. 4 *per cent and* 4¼ *per cent bonds* are exempt from all Federal, State, and local taxation, except (*a*) estate or inheritance taxes and (*b*) Federal income surtaxes and profits taxes, as follows:

1. First Liberty loan converted 4 per cent bonds of 1932–1947 (first 4s). 2. First Liberty loan converted 4¼ per cent bonds of 1932–1947 (first 4¼s, issue of May 9, 1918). 3. First Liberty loan second converted 4¼ per cent. bonds of 1932–1947 (first 4¼s, issue of October 24, 1918). 4. Second Liberty loan 4 per cent bonds of 1927–1942 (second 4s). 5. Second Liberty loan converted 4¼ per cent bonds of 1927–1942 (second 4¼s). 6. Third Liberty loan 4¼ per cent bonds of 1928 (third 4¼s). 7. Fourth Liberty loan 4¼ per cent bonds of 1933–1938 (fourth 4¼s). 8. Victory Liberty loan 4¾ per cent convertible gold notes of 1922–1923 (4¾ per cent Victory notes).	Are exempt, both as to principal and interest, from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority except (*a*) estate or inheritance taxes, and (*b*) graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations.

II. 4 *per cent and* 4¼ *per cent bonds* are entitled to limited exemptions from Federal income surtaxes aad profits taxes, as follows:

4 per cent and 4¼ per cent Liberty bonds (but not 4¾ per cent Victory notes) are entitled to certain limited exemptions from graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations, in respect to the interest on principal amounts thereof, as follows:

$5,000 in the aggregate of first 4s, first 4¼s (issues of May 9 and October 24, 1918) second 4s and 4¼s, third 4¼s, fourth 4¼s, Treasury certificates, and war-savings certificates.

30,000 of first 4¼s (issue of October 24, 1918, only), until the expiration of two years after the termination of the war.

30,000 of fourth 4¼s, until the expiration of two years after the termination of the war.

30,000 in the aggregate of first 4s, first 4¼s (issues of May 9 and October ber 24, 1918), second 4s and 4¼s, third 4¼s, and fourth 4¼s, as to the interest received on and after January 1, 1919, until the expiration of five years after the termination of the war.

45,000 in the aggregate of first 4s, first 4¼s (issue of May 9, 1918, only), second 4s and 4¼s, and third 4¼s, as to the interest received after January 1, 1918, until the expiration of two years after the termination of the war; this exemption conditional on original subscription to, and continued holding at the date of the tax return of two-thirds as many bonds of the fourth Liberty loan.

20,000 in the aggregate of first 4s, first 4¼s (issues of May 9, and October 24, 1918), second 4s and 4¼s, third 4¼s, and fourth 4¼s, as to the interest received on and after January 1, 1919; this exemption conditional upon original subscription to, and continued holding at the date of the tax return of one-third as many notes of the Victory Liberty loan, and extending through the life of such notes of the Victory Liberty loan.

160,000 total possible exemptions from Federal income surtaxes and profits taxes, subject to conditions above summarized.

III. 3½ *per cent bonds and* 3¾ *per cent notes* are exempt from all Federal, State, and local taxation, except estate or inheritance taxes, as follows:

1. First Liberty loan 3½ per cent bonds of 1932–1947. 2. Victory Liberty loan 3¾ per cent convertible gold notes of 1922–1923.	Are exempt, both as to principal and interest, from all taxation (except estate or inheritance taxes) now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority.

(Circular appended to T. D. 2836.)

3327 Advisable to Make Return even though no Net Income, if Due to
1142 **Deductible Losses Claimed.**—Reference is made to your letter of
3013 March 10, 1919, in which you ask the following question: "An individual has had a loss determined in 1918 by the Courts that will exceed all income. In view of the fact that the income is large, and my client has always filed a report, would it be wise to file a report this year and thus dispose of the matter rather than to omit such filing and eventually have the Government take up the matter of the non-filing, etc." ¶In reply you are advised that if this individual's net income for 1918 was less than

the exemption to which he was entitled according to his marital status on December 31, 1918, he is not required to file an income tax return. However, as you state he has filed a return for all previous years it would be advisable for him either to fill out a return showing his total income and deductions, or notify the Collector of the circumstances which precluded his rendering a return for 1918, in order that it may be determined whether the loss, which he has sustained, is deductible for income tax purposes. [¶3328, below, is a part of this same letter.]

3328 **Full Credit for all Allowable Deductions to be Taken in Computing**
736 **Net Income Subject to Surtax.**—In reply to your second inquiry
2829 you are informed that if Item J, page 2 of Form 1040 shows a net loss, the amount of same may be deducted from the total of Items K-a and K-b as shown on line L before bringing this item forward to line 15, page 1 of the return. (Letter to Alexander John Lindsay, New York, N. Y., signed by J. A. Callan, Assistant to the Commissioner, and dated May 6, 1919.)

(I. T.—Min. 2129.)

3329 **Collectors Authorized to Accept Tentative Returns Form 1031 T,**
3305 **when Filed by Corporations having Fiscal Year ending January 31 and February 28, 1919.**—A form letter has been prepared by this office for use in replying to requests of corporations for an extension of time where their fiscal year ends in 1919 for the reason that the return form has not yet been prepared. In granting this extension the corporations are advised that they may file tentative returns on Form 1031 T and pay one-fourth of the estimated tax with interest on such payment from the original due date to the time of filing the tentative return, and that any deficiency in the first instalment as shown by the completed return must be paid together with interest thereon from the original due date at the rate of one-half of one per centum per month at the time of filing the completed return.

3330 The filing of tentative return 1031 T automatically extends the time where needed for filing completed returns, not beyond the due date of the second instalment of the tax. The second instalment will be due five and one-half months after the close of the corporation's fiscal year ending in 1919. (IT—Mim. 2129, signed by Commissioner Daniel C. Roper, and dated May 6, 1919.)

(T. D. 2840.)

3331 **Due Date for Payment of Second Installment of Income and War**
2341 **Profits and Excess Profits Taxes Based on Calendar Year Returns.**—
3036 Taxpayers and collectors are notified that June 15, 1919, is the date
3037 named for payment of the second installment of income and war profits and excess profits taxes based on returns for the calendar year 1918, and for payment of the second installment of other taxes the first installment of which was due on March 15; but, since June 15 falls on Sunday, such payments reaching the collector on Monday, June 16, 1919, will be accepted in full without interest or penalty. Taxpayers are urged to make payment on or before that date, and their attention is called to the fact that Section 250 (a) of the Revenue Act of 1918, specifying when tax payments are due, omits the ten-day period of grace allowed under the former law. Failure to pay the second installment on or before June 16, 1919, will necessitate the addition of penalties and interest, as provided by law. (T. D. 2840, signed by Commissioner Daniel C. Roper, and dated May 13, 1919.)

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3332 **Obligation to Render Undistributed Profits Tax Returns by Cor-**
746 **porations with Fiscal Years ending in 1918.**—Receipt is acknow-
2995 ledged of your letter of recent date, in which you inquire whether corporations having a fiscal year ended on July 31, 1918, are required [under Sec. 10 (b), Revenue Act of 1916 as amended by Revenue Act of 1917] to file Corporation Undistributed Net Income Tax Returns (Form 1112) and how the undistributed net income to be shown in the return is to be computed. ¶[In reply, you are advised that corporations having a fiscal year ended on the last day of any month subsequent to May 31, 1918, will not be required to render returns on Form 1112 for the period covered by such fiscal year. [Returns of undistributed profits were required to be made within 60 days after end of 6 months after end of taxable year. Time for making returns by corporations with fiscal years ending June 30, 1918, would have been on or before March 1, 1919. The Revenue Act of 1918, repealing the old law, became effective February 25, 1919.] (Letter to Oppenheim, Collins and Company, New York, N. Y., signed by Acting Deputy Commissioner P. S. Talbert, and dated May 13, 1919.)

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3333 **Stock Dividends Under the Act of September 8, 1916.**—The Ma-
815 comber vs. Eisner case, argued in April before the Supreme Court, a motion to advance having been concurred in by the Government, was restored to the Docket by the Court on May 19, 1919, for further argument. (Memorandum by The Corporation Trust Company.)

(T. D. 2843).

3334 **Salaries of State Officials and Salaries and Wages of Employees**
2875b **of a State are not Liable to Income Tax Imposed by the Revenue Act of 1918.**—Section 213 (a) of the Revenue Act of 1918 provides that gross income shall include "gains, profits, and income derived from salaries, wages, or compensation for personal service * * * of whatever kind and in whatever form paid."

3335 In accordance with an opinion of the Attorney-General, dated May 6, 1919, and based on the well-settled rule that governmental agencies of the States are not subject to taxation by the Federal Government, it is held that salaries of State officials and salaries and wages of employees of a State are not subject to the income tax imposed by the said Revenue Act of 1918. (T. D. 2843, signed by Commissioner D. C. Roper, and dated May 17, 1919.)

(T. D. 2844.)

3336 **Taxpayers Residing or Traveling Abroad to pay at the Time of Filing**
3027 **Returns only the Installments of Tax Past Due without Interest at the Rate of One-half of One per Centum per Month and other Installments as they Fall Due.**—The final edition of Regulations 45 is amended by changing Article 445 to read as follows:

Art. 445. Extension of Time in the Case of Persons Abroad.—In view of the disturbed conditions abroad and the consequent interference with the usual channels of communication, an extension of time for filing returns of income for 1918 and subsequent years and for paying the tax is hereby granted in the case of nonresident alien individuals and nonresident foreign corporations, or their proper representatives in the United States, and of American citizens residing or traveling abroad, including persons in military or naval service on duty outside the United States, for such period as may be necessary, not exceeding ninety days after proclamation by the President of the end of the war with Germany. The installments of tax which are actually due must be paid at the time of filing the return and the other installments shall be paid as they fall due. In all such cases an affidavit must be attached to the return, stating the causes of the delay in filing it, in order that the Commissioner may determine that the failure to file the return in time was due to a reasonable cause and not to wilful neglect and that the return was filed without any unnecessary delay. If the showing justifies the conclusion that the failure to file the return in time was excusable, no penalty will be imposed. This extension is granted as a matter of general expediency to all persons abroad owing income, war profits, and excess profits taxes to the Federal Government and is not granted upon the request of any particular taxpayer. Accordingly, in the case of taxpayers who take advantage of this general extension of time for the filing of returns and the payment of tax no interest will be collected from such taxpayers, but where a request is made by a taxpayer and an extension is granted for other reasons by the Commissioner, interest will be collected at the rate of one-half of one per centum per month from the time the tax would have been due if no extension had been granted. (T. D. 2844, signed by Commissioner Daniel. C. Roper, and dated May 17, 1919.)

(T. D. 2840.)

3331 **Due Date for Payment of Second Installment of Income and War**
2341 **Profits and Excess Profits Taxes Based on Calendar Year Returns.**—
3036 Taxpayers and collectors are notified that June 15, 1919, is the date
3037 named for payment of the second installment of income and war profits and excess profits taxes based on returns for the calendar year 1918, and for payment of the second installment of other taxes the first installment of which was due on March 15; but, since June 15 falls on Sunday, such payments reaching the collector on Monday, June 16, 1919, will be accepted in full without interest or penalty. Taxpayers are urged to make payment on or before that date, and their attention is called to the fact that Section 250 (a) of the Revenue Act of 1918, specifying when tax payments are due, omits the ten-day period of grace allowed under the former law. Failure to pay the second installment on or before June 16, 1919, will necessitate the addition of penalties and interest, as provided by law. (T. D. 2840, signed by Commissioner Daniel C. Roper, and dated May 13, 1919.)

3332 **Obligation to Render Undistributed Profits Tax Returns by Cor-**
746 **porations with Fiscal Years ending in 1918.**—Receipt is acknow-
2995 ledged of your letter of recent date, in which you inquire whether corporations having a fiscal year ended on July 31, 1918, are required [under Sec. 10 (b), Revenue Act of 1916 as amended by Revenue Act of 1917] to file Corporation Undistributed Net Income Tax Returns (Form 1112) and how the undistributed net income to be shown in the return is to be computed. ¶In reply, you are advised that corporations having a fiscal year ended on the last day of any month subsequent to May 31, 1918, will not be required to render returns on Form 1112 for the period covered by such fiscal year. [Returns of undistributed profits were required to be made within 60 days after end of 6 months after end of taxable year. Time for making returns by corporations with fiscal years ending June 30, 1918, would have been on or before March 1, 1919. The Revenue Act of 1918, repealing the old law, became effective February 25, 1919.] (Letter to Oppenheim, Collins and Company, New York, N. Y., signed by Acting Deputy Commissioner P. S. Talbert, and dated May 13, 1919.)

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(T. D. 2843).

3334 **Salaries of State Officials and Salaries and Wages of Employees**
2875b **of a State are not Liable to Income Tax Imposed by the Revenue Act of 1918.**—Section 213 (a) of the Revenue Act of 1918 provides that gross income shall include "gains, profits, and income derived from salaries, wages, or compensation for personal service * * * of whatever kind and in whatever form paid."

3335 In accordance with an opinion of the Attorney-General, dated May 6, 1919, and based on the well-settled rule that governmental agencies of the States are not subject to taxation by the Federal Government, it is held that salaries of State officials and salaries and wages of employees of a State are not subject to the income tax imposed by the said Revenue Act of 1918. (T. D. 2843, signed by Commissioner D. C. Roper, and dated May 17, 1919.)

(T. D. 2844.)

3336 **Taxpayers Residing or Traveling Abroad to pay at the Time of Filing**
3027 **Returns only the Installments of Tax Past Due without Interest at the Rate of One-half of One per Centum per Month and other Installments as they Fall Due.**—The final edition of Regulations 45 is amended by changing Article 445 to read as follows:

Art. 445. **Extension of Time in the Case of Persons Abroad.**—In view of the disturbed conditions abroad and the consequent interference with the usual channels of communication, an extension of time for filing returns of income for 1918 and subsequent years and for paying the tax is hereby granted in the case of nonresident alien individuals and nonresident foreign corporations, or their proper representatives in the United States, and of American citizens residing or traveling abroad, including persons in military or naval service on duty outside the United States, for such period as may be necessary, not exceeding ninety days after proclamation by the President of the end of the war with Germany. The installments of tax which are actually due must be paid at the time of filing the return and the other installments shall be paid as they fall due. In all such cases an affidavit must be attached to the return, stating the causes of the delay in filing it, in order that the Commissioner may determine that the failure to file the return in time was due to a reasonable cause and not to wilful neglect and that the return was filed without any unnecessary delay. If the showing justifies the conclusion that the failure to file the return in time was excusable, no penalty will be imposed. This extension is granted as a matter of general expediency to all persons abroad owing income, war profits, and excess profits taxes to the Federal Government and is not granted upon the request of any particular taxpayer. Accordingly, in the case of taxpayers who take advantage of this general extension of time for the filing of returns and the payment of tax no interest will be collected from such taxpayers, but where a request is made by a taxpayer and an extension is granted for other reasons by the Commissioner, interest will be collected at the rate of one-half of one per centum per month from the time the tax would have been due if no extension had been granted. (T. D. 2844, signed by Commissioner Daniel. C. Roper, and dated May 17, 1919.)

3337 **Claims on Account of Inventory Losses.**—It is desired to call your
2963 attention to the fact that the telegram addressed by this office to
3291 E. G. Shorrock and Company of Seattle, Washington, which is published in your Income Tax Service [¶3291] and which was in reply to an inquiry from that company in regard to the filing of a claim for abatement as a result of the re-valuation of inventories for the year 1918 was based on the provisions of Article 261 of Preliminary Income Tax Regulations 45, which has since been modified by the last edition of the Regulations as expressed in Articles 261 to 268 thereof. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated May 21, 1919.)

3338 **On the Use of Ownership Certificates.**—Receipt is acknowledged
2999 of your letter dated April 11, 1919, referring to the confusion existing
3000 in the minds of debtor corporations, paying agents and bondholders
3060 in regard to the use of ownership certificates, Forms 1000, 1001 and 1001–A, in connection with interest derived from foreign bonds. Your statement is noted that the wording on Form 1000 would seem to indicate that it may be used by nonresident alien individuals, fiduciaries or corpora-

tions, with respect to interest on foreign bonds which do not contain a tax-free covenant clause.

3339 In reply you are advised that Form 1000, Revised February, 1919, in common with other ownership certificates issued during that month, is undergoing modification, and it is believed that the wording of the new forms will clearly show the purposes for which they are intended.

3340 Form 1000 Revised should only be used by nonresident alien individuals, fiduciaries and corporations, when the bonds are issued by domestic or resident corporations, whether or not the bonds contain a tax-free covenant clause. This form is also prescribed for the use of nonresident alien partnerships when the bonds issued by domestic or resident corporations contain a tax-free covenant clause. A foreign corporation not engaged in trade or business within the United States, which has a fiscal agent in the United States is not a resident corporation. Income derived by non-resident alien individuals, fiduciaries, partnerships or corporations, from bonds issued by nonresident foreign corporations or foreign governments is not subject to Federal income tax and Form 1001–A has been devised as the proper form on which to report such income.

3341 Citizens or residents of the United States who do not desire to claim exemption from having tax paid at the source on income derived from bonds containing a tax-free covenant clause issued by nonresident foreign corporations or foreign governments, having a paying agent in this country, should use Form 1000 Revised, and if such individuals wish to claim exemption from having tax paid at the source, Form 1001–A should be used. When a domestic partnership is the owner of such bonds Form 1000 Revised should be executed. (Letter to The Corporation Trust Company, signed by Acting Commissioner J. H. Callan, and dated May 20, 1919.)

3342 **Withholding on Deposits of Nonresident Foreign Corporations.**—
572 Is withholding of ten per cent required from interest on bank deposits
600 paid or credited to nonresident foreign corporations? Please reply
3314 collect. (Answer.) Tax should be withheld at rate of ten per cent from interest credited on and after February 25, 1919, on bank deposits of nonresident alien corporations not having office or place of business in United States. [Note that the question at ¶3314 relates to *individuals* and *partnerships* solely.] (Telegram from The Equitable Trust Company of New York and the answer thereto, signed by Commissioner Daniel C. Roper and dated May 23, 1919.)

3343 **Consolidated Return of Fiscal Year Parent and Affiliated Calen-**
3240 **dar Year Public Utility.**—We are asking for a ruling relating to consolidated returns on the state of facts contained below, and ask for your ruling by telegram, collect. ¶A corporation owns all the capital stock of another corporation. The corporation owning the capital stock makes its Income Tax Return on fiscal year basis ending Mar. 31, 1919—the other corporation makes its Income Tax Return on calendar year basis ending Dec. 31st. ¶It is our understanding that under Article 533 such corporations will be deemed to be affiliated, as 95% of the stock of the corporation whose fiscal year ends Dec. 31st is owned by the corporation whose fiscal year ends Mar. 31st. ¶Under Article 638 whenever the fiscal year of one of the affiliated corporations differs from the fiscal of the parent or principal corporation the Commissioner should be fully advised by the taxpayer in order that provision may be made for assessing the tax in respect

to the period prior to the beginning of the fiscal year of the parent or principal company. The question therefore arises as to the return for the three-month period of the corporation whose fiscal year ends Dec. 31st and it appeared to us that if your ruling would be to the effect, that the return should be made on the basis of the fiscal year of the parent corporation, such corporation being the corporation holding 95% of the stock of the second corporation, that there should be a return made for the corporation whose year ended Dec. 31st for the period between Dec. 31, 1917, and Mar. 31, 1918, and then a consolidated return made for the year Mar. 31, 1918, to Mar. 31, 1919. ¶The corporation whose taxable year ends Dec. 31st and whose stock is held by corporation having its taxable year end Mar. 31st is a Public Service Corporation. I assume from letter of Acting Commissioner J. H. Callan to The Corporation Trust Co., dated April 17, 1919, and found in Corporation Income Tax Service as paragraph 3307, that it would make no difference whether one or both corporations were Public Service Corporations and they would not be taken out of the class of affiliated corporations because of that fact. ¶A tentative return was filed covering corporation whose fiscal year ended Dec. 31st with a statement that it was understood that a consolidated return would probably be required, and that an adjustment would be made for the first three months of 1918. There was also a tentative return filed for a corporation whose fiscal year ended Mar. 31, 1918. ¶On the foregoing state of facts will you, therefore, wire us—first: should there be a consolidated return filed; second: shall the corporation whose taxable year ends Dec. 31st file an Income Tax report for the period between Dec. 31, 1917, and Mar. 31, 1918; third: should the taxpayer file a statement giving the reasons for filing the return for the period between Dec. 31st and Mar. 31st; fourth: in computing the normal tax on income for the three-month period should the exemption be $500, one-fourth of the $2,000 allowed, under Section 236; fifth: if the company whose stock is owned by the principal company is a Public Service Corporation would a consolidated return be required.

(Answer to above Inquiry.)

3344 Your letter sixth. Consolidated return including parent and fully owned public service subsidiary corporation should be filed for fiscal year parent ended March 31, 1918. Tax is computed in first instance on basis of twelve month period ended March 31, 1918, with full deductions under revenue act of nineteen eighteen and then prorated. With return file complete statement facts. (Letter of inquiry from The Cleveland Trust Company, Cleveland, Ohio, and the answer thereto, signed by Acting Commissioner J. H. Callan, and dated May 20, 1919.)

(T. D. 2847.)

3345 **Corporations are not Entitled to Deduct from Gross Income the**
1102 **Amount of Contributions to Religious, Charitable, Scientific or**
1118 **Educational Corporations or Associations, although such Contribu-**
2962 **tions may be made to Red Cross or other War Activities.**—The
3209 Revenue Act of 1918 contains two sections relating to deductions which may be made in ascertaining net income subject to tax. Section 214 relates to individuals and allows as deductions:

(1) All ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, etc.

(2) All interest paid or accrued within the taxable year on indebtedness etc., (with certain exceptions).

(3) Taxes paid or accrued within the taxable year etc., (with certain exceptions).

(4–10) Certain allowance for losses, bad debts, exhaustion, wear and tear of property of various sorts.

(11) Contributions or gifts made within the taxable year to corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, etc.

3346 Section 234 relates to corporations, and allows as deductions:

(1) All ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity.

(2) All interest paid or accrued within the taxable year on its indebtedness (with certain exceptions).

(3) Taxes paid or accrued within the taxable year, etc., (with certain exceptions).

(4 et seq.) Losses sustained of a certain character, bad debts, allowances for exhaustion, wear and tear, etc.

3347 The question is presented whether corporations are entitled to deduct from their gross income for the purpose of the income tax, the amount of contributions to religious, charitable, scientific or educational corporations or associations, this question arising most frequently with reference to contributions made to the Red Cross and other war activities.

3348 It will be observed that there is no express deduction permitted corporations of such contributions, as in the case of individuals, and unless, therefore, they fall within the definition of some item of deduction allowed to corporations, they cannot be allowed. The only head within which it might be suggested that such contributions could be included is that of ordinary and necessary expenses paid or incurred in carrying on any trade or business, including reasonable salaries or other compensation, rentals, and payments for use of property, provided for in paragraph 11. Practically these same deductions are permitted in section 214 in the case of individuals, and had such words included the contributions or gifts mentioned in paragraph 11 of Section 214, it would have been unnecessary to put in such paragraph, as they would have been covered by paragraph 1 of such section.

3349 The Attorney General, in an Opinion dated May 19, 1919, states the view that ordinary and necessary expenses contemplated by paragraph 1 of sections 214 and 234 were not intended to include all necessary expenses because the two immediately succeeding paragraphs provide for deducting interest and taxes, both of which are necessary expenses; also the provision in regard to allowance for salaries, compensation, rentals, etc., indicates that all of the expenses, which are contemplated under the terms used in paragraph 1 of these sections, are expenses incurred directly in the maintenance and operation of the business, and not all those which may be beneficial and even necessary in the broader sense.

3350 In addition to the above considerations and to the fact that there is express provision for deducting contributions or gifts in the case of individuals, which is wanting in the section providing for deductions to be made by corporations, reference to the legislative history of the Revenue Act of 1918 (Congressional Record for September 17, 1918), shows that an amendment providing that corporations might make deductions of con-

tributions or gifts, as in the case of individuals, came to a vote and was defeated, the principal reason assigned in the debate being that it would be dangerous to authorize directors to be generous with the money of their stockholders even for such laudable purposes.

3351 It is concluded, therefore, that corporations are not entitled to deduct from their gross income for the purpose of the income tax the amount of contributions made to religious, charitable, scientific or educational corporations or associations, although such contributions may be made to the Red Cross or other war activities. (T. D. 2847, signed by Commissioner Daniel C. Roper, and dated May 24, 1919.)

(T. D. 2849.)

3352 **Correcting Item 20, Schedule it, Page 2 of Form 1120, Corporation**
1096 **Income and Profits Tax Return.**—Form A, revised (Mining) and Form
2167 N (Oil and Gas) have been prepared for the use of taxpayers engaged in mining or in the production of oil and gas. A sufficient supply will be sent to Collectors of Internal Revenue for distribution.

3353 These forms are prescribed to facilitate the compilation and presentation of certain information required for the audit and examination of the returns of these classes of taxpayers. If, however, it is more convenient to use other methods of tabulation, the information so furnished, if complete, will be accepted in lieu of those forms.

3354 The information called for by these forms should be filed with the returns in complete detail, either on the forms prescribed or in other suitable manner. This requirement is necessary for the reason that depletion sustained must be taken into consideration in the computation of invested capital, regardless of whether or not a deduction for it is claimed or has been claimed for it in the past by the taxpayer.

3355 This requirement applies to individual as well as corporate taxpayers. (T. D. 2849, signed by Commissioner Daniel C. Roper, and dated May 27, 1919.)

3356 **Questions and Answers about Inventory Losses. Compiled and**
1119 **Arranged by Tax Committee of the Southern Wholesale Dry**
2963 **Goods Association.**—These questions were asked at the Convention of the Southern Wholesale Dry Goods Association, held at Louisville, Kentucky, April 17th. At the suggestion of the Hon. Daniel C. Roper, Commissioner of Internal Revenue, these questions were submitted to the Advisory Tax Board at Washington and explained by a committee from the Association composed of Messrs. W. J. D. Bell, Lynchburg; Harry Dumesnil, Louisville; C. C. Henking, Huntington, and Norman H. Johnson, Richmond. Each of the answers is made by the Advisory Board, and, therefore, is authoritative.

3357 **Comment**: [The Tax Committee of the Southern Wholesale Dry Goods Association, consisting of W. J. D. Bell, Chairman, W. R. King, Vice-Chairman, Harry Dumesnil, C. C. Henking, C. L. Sanger, James J. Ragan and Norman H. Johnson, Secretary, recently issued a pamphlet entitled "Questions and Answers on Inventories and the Abatement Clause of the Internal Revenue Act of 1918" containing fifty eight questions and the answers thereto. By the courtesy of the Committee, through its Secretary, we are permitted to reproduce below ¶ 3358 to ¶ 3370. Those questions and answers which we have not reproduced were rather more specific in their character than those we have given; hence their exclusion here. The foreword at ¶ 3356, above, is the foreword of the pamphlet as issued by the Tax Committee.—The Corporation Trust Company.]

3358 Q. 1. Are copies of inventory required by the Department to be filed with return?

Ans. No. But it should be understood by all taxpayers that all original inventory sheets and all papers which would have any bearing on a claim for loss in inventories (including sales slips) should be retained for a period of not less than five years.

It is recommended that the taxpayer attach to his return for the taxable year 1918, and for all subsequent years, a summarized analysis of his inventories.

3359 Q. 2. Are these copies of inventory necessary whether a claim in abatement is filed or not?

Ans. See answer to Question 1. However, it is recommended to the taxpayer that all such records be maintained in order to facilitate a proper verification of the return at any time deemed advisable by the Commissioner.

Loose-leaf ledgers are recommended, whereby control can be secured of each classification or lot of goods upon which claim is to be made.

Therein should be recorded quantities and values as returned on the inventory at the close of the taxable year 1918; and there should be recorded in summary form each day or week, the quantities sold and the values thereof, and all items of sales should be carried forward, according to established classification adopted by the taxpayer, to the time when the quantities as reported in the inventory shall have been accounted for.

At the time of filing the return, on or about June 15, 1919, the taxpayer should compute his loss from sales to that date, by deducting from the total sales a reasonable and proportionate allowance for operating and/or selling expense. The net result ascertained should be deducted from the inventory value of the goods included in the 1918 inventory sold to that date, and the resultant loss brought down.

The taxpayer should then reduce the balances remaining unsold to the then market value, and add the loss thus ascertained to the losses ascertained from sales.

The sum total of these computations would represent the total loss upon which the amount of tax to be claimed *in abatement* is to be computed and this amount may be deducted from the second installment of the tax: *Provided*, proper bond is furnished on Form 1124 in accordance with Article 268 of Regulations 45.

Should any goods unsold, upon which claim in abatement has been filed at the time of filing the return, be disposed of by sale at some future period within the taxable year 1919, the taxpayer will continue to record the sales effected, deducting therefrom the proportionate cost of operating and/or selling expense.

The gain or loss would then be ascertained by computing the difference between the adjusted sales values and the inventory value established at the time of filing the claim in abatement.

If at the close of the taxable year 1919 there remains any commodity unsold, the taxpayer shall adjust the inventory value to the market price (ignoring mere temporary fluctuations in price or value), at the close of the taxable year and compute the amount of gain or loss.

Such gain or loss shall be combined with the gain or loss on sales between the time of filing the return and the close of the taxable year 1919.

If it is shown that the taxpayer has sustained a loss additional to that shown in the claim in abatement a claim for refund should be made on Form 46 for the amount of tax overpaid.

Should it be shown that the amount deducted in the claim in abatement at the time of filing the return for the taxable year 1918 is in excess of the tax based upon actual losses sustained throughout the taxable year 1919, the taxpayer must remit to the Collector the additional amount of tax involved with interest at the rate of 1% per month from the time of filing the return until the date of filing the final adjustment of taxes for the taxable year 1918 on account of inventory losses. An example is given for the information of your association:

Assume an inventory at December 31, 1918, 200,000 yds. at 15c.....		$30,000 00
Assume sales, between January 1, 1919, and June 1, 1919, 100,000 yds. at 12½c.....	$12,500 00	
Cost of manufacturing and/or selling based upon data ascertained from 1918 operations, say in this case 15% of sales values.....	1.875 00	
Net proceeds from sales.....	$10,625 00	
The inventory cost at 15c. per yd. amounted to.....	$15,000 00	
Net loss upon which tax can be claimed in abatement.....		$4,375 00
Assume that the market price at June 1, 1919 (on the assumption that the taxpayer will prepare his claim on June 1, rather than delay until June 15, 1919), on this class of goods was 12c. There would remain unsold at that time 100,000 yds. originally inventoried at 15c. to be reduced to 12c. or at a loss of 3c. per yd. aggregating.....		3,000 00
Total amount upon which tax could be claimed in abatement at the time of filing the return on or before June 1, 1919, would be.....		$7,375 00
Now, between June 1, 1919, and December 31, 1919, assume that the taxpayer sells 50,000 yds. at a price of 15c. per yard, amount of sale would be.....	$7,500 00	
Deducting therefrom operating and/or selling expense at the same rate of 15% (or, if ascertainable, the adjusted percentage for 1919).....	1,125 00	
Net proceeds from sale.....	$6,375 00	
Cost of this material as adjusted at June 1, 1919, on the basis of 12c. per yd.....	6,000 00	
Gain on these transactions.....	$375 00	
Further, assume that the remaining 50,000 yards were unsold at the close of the taxable year 1919, and that the market price had risen to 17c. per yard, the taxpayer would, in this case, have to readjust his inventory value to the 17c. basis, and account for the element of appreciation, in this case (5c. per yard over adjusted figure as of June 1).....	2,500 00	
Total gains.....		2,875 00
Adjusted loss upon which tax is to be abated or refunded, as the case may be.....		$4,500 00

See also answer to Question No. 27.

3360 Q. 5. Does the claim in abatement apply to all goods charged in 1918, though not received until after inventory?

Ans. All goods where title has actually passed to the taxpayer, must be included in the inventory, and as a result thereof are eligible for consideration in any claim in abatement.

It is necessary that title shall have passed to the taxpayer in 1918, and the goods merely ordered for future delivery and for which no transfer of title has been effected, should be excluded. See Article 1581 of Regulations 45.

3361 Q. 6. Where inventory is taken on December 1 or 15, can a claim be made for all goods invoiced up to December 31, 1918?

Ans. It is presumed that your question refers either to a fiscal year ending November

30, 1918, or, in the second instance, to a calendar year ending December 31, since no fiscal year can be considered except at the close of some month in the year.

In the first instance, no goods to which title has not passed to the vendee at and including November 30, 1918, can be considered as inventory items.

In the second instance, all goods to which title has passed to the vendee up to December 31, 1918, must be included in the inventory.

Where the fiscal year ended on November 30, 1918, the claim in abatement can only apply to goods which are the preperty of the taxpayer up to that date, but no claim can be made on any materials which have become the property of the taxpayer between December 1 and 31, inclusive, of that year.

3362 **Q. 14.** Can more than one claim be filed?

Ans. Two claims may be filed, one at time of filing the return, and one adjusting the entire claim for losses at the close of the taxable year 1919.

The first would represent a claim in abatement; the second, a claim for refund. It is possible that an additional amount of tax may become due from the taxpayer with interest at the rate of 1% per month from the time of making the deduction until the time of filing the final statement, which would be brought about by the fact that, in the disposition of unsold goods as to the 1918 inventory after the filing of the original return, and the claim in abatement, gains may result from subsequent sales. It will therefore be necessary for the taxpayer to prepare a statement which will fully reflect the corrected amount of any claim to which he may be entitled for losses in inventory of 1918, and this statement must definitely embrace the total amount of inventory value as recorded on the books of the taxpayer at the end of the taxable year 1918, and be capable of proper audit.

The following is suggested as a possible outline to be used in making final statement of adjustment at the close of the taxable year 1919. This is based upon the illustration given in answer to Question 2 which applies to one item of inventory only, but it must be understood that the final statement referred to herein, must cover the entire inventory value as at the end of the taxable year 1918.

	Quantity.	Value.
1. Inventory close of taxable year 1918	200,000	$30,000 00
2. Sales from 1918 inventory during taxable year 1919	150,000	20,000 00
3. Less deductions from sales for selling expense		3,000 00
4. Net sales proceeds (Item 2 value less Item 3)		17,000 00
5. Balance of 1918 inventory on hand at close of taxable year (Quantity Item 1 less Item 2.) (Value priced at market close of taxable year 1919.)	50,000	8,500 00
6. Net sales proceeds and balance of inventory (Item 4 plus Item 5, values.)		25,500 00
7. Loss (Item 1 value less Item 6)		4,500 00
8. Gain		.....
9. Amount of claim in abatement or for refund filed (date.....)		7,375 00

(In this illustration an excessive claim in abatement of tax based upon a loss of inventory values, amounting to $2,875 is assumed. Tax upon this amount with interest at one per cent. per month between the date of making the deduction and final statement will be assessed in this case.)

Should the taxpayer elect not to file a claim in abatement at the time of filing his return, but rather to wait until the end of the taxable year 1919, then, in that case, but one claim would be filed.

3363 **Q. 20.** Suppose we are unable to sell them (Discontinued off colors in broken lots.)?

Ans. If the salable colors had been disposed of and the stock broken before the close of the taxable year 1918, the element of obsolescence if definitely determined should be taken into account in both the inventory made at the close of the taxable year 1918 and that made at the close of the taxable year 1919. If "it is impossible to get the market value for such colors in broken stocks" the taxpayer will be required to await the sale of such broken stocks in order to determine the loss involved; but it is believed that in practically all instances a reasonable and fair estimate of the market value can be made.

If the salable colors were disposed of after the close of the taxable year 1918, the accompanying obsolescence of the remaining stock takes place in the year 1919, and the deduction must be taken not as a loss in inventory, but as obsolescence occurring in the taxable year 1919.

3364 **Q. 25.** We take stock on January 1. During December we shipped out quite a lot of ginghams at the high price, and in January were forced to rebate our customers on sales made in December. Are we allowed to charge this rebate in our claim?

Ans. In cases where rebates have been made on sales reported in the 1918 Income Tax Return, a separate schedule should be submitted and the total thereof may be included in the taxpayer's claim in abatement.

This schedule should be prepared in such manner as to reflect:

(a) The date of each rebate; (b) the name and address of each party securing the benefit thereof; (c) a description fo the goods; (d) the quantities; (e) the sales value of each item; and (f) the amount rebated.

3365 Q. 26. Suppose I ship some ginghams at the high price in January and have to rebate my customers; am I entitled to put that on the claim?

Ans. Rebates made during the taxable year 1919 on sales made during such year (provided the goods to which the rebate applies were included in the inventory at the close of the taxable year 1918) will be considered as an adjustment of sales values in arriving at the loss on inventories for the taxable year 1918, and will be treated as outlined in Question No. 2. This cannot go in the rebate claim, but the rebate may be considered in determining the sale price for the purpose of determining an *inventory* loss.

It must be understood that rebates made on goods acquired and sold subsequent to the end of the taxable year 1918 cannot be considered in any manner as a 1918 inventory loss.

3366 Q. 27. Do we have to file a complete inventory of all of our stock, or just the stock on which we ask an abatement?

Ans. See Question No. 1. You are required to file with your original claim and at the close of the taxable year 1919, summarized statements covering all adjustments involved.

To conform to good accounting practices, the taxpayer should consider these summaries in the light of controlling accounts and the sum totals thereof should equal the total inventories maintained in detail by the taxpayer.

It must be understood that claim for losses in inventories of the taxable year 1918 are to embrace all items of the taxpayer's inventory so that gains made in any sales of certain items or classes will be used to offset losses in others and the net result as to the entire inventory determined.

Thus if the final computation shows a net gain over all inventory items sold, no claim for loss in any particular item or items can be sustained.

3367 Q. 28. How should inventory have been taken, at cost or market?

Ans. The taxpayer is permitted to take his inventory at the close of the taxable year 1918 at (a) cost or (b) cost or market, whichever is the lower.

3368 Q. 34. When can this claim for abatement be filed?

Ans. Claim for net loss cannot be made before November 1, 1919. Claim in abatement for loss in inventory must be filed at the time of filing the return for the taxable year 1918.

3369 Q. 37. Where the claim in abatement is allowed, what effect has that on 1919 profits?

Ans. Where a claim for inventory loss is finally allowed, this means that the net income for 1919—as established by usual accounting methods—will be correspondingly higher as reported in the return for the taxable year 1919. In other words, an item of loss which would normally find its way into 1919 operating accounts is thrown back against 1918 income. This Department recommends that the accounting records of the taxpayer be not changed, but that any adjustment of inventories be recorded in distinct accounts, supported by adequate detailed schedules.

In arriving at the net operating profits for any year, the income, excess and war profits taxes to be paid on such profits are not taken into consideration. Such taxes, therefore, are theoretically paid out of surplus for the year. If at a subsequent date any of such taxes are refunded, they should not be recorded in the operating accounts, but should be credited directly to surplus.

3370 Q. 47. Individual income of partnerships. How do you file plea of abatement when partnership files no blank or form like a corporation does?

Ans. See Article 321 of Regulation 45.

A claim in abatement arising from a loss in 1918 partnership inventory must be made by each individual partner as to his distributive share of recomputed net income. To this claim should be attached the statement of the partnership showing the loss in inventory supported in the same manner as such claims are supported by corporations and individuals. The statement filed as to the partnership as a whole will be used by the Department for the purposes of record and verification and any adjustments which may be found necessary will be spread pro-rata over the claims of the individuals. At the close of the taxable year 1919 a properly authorized member of the partnership shall compile the final statement of adjustment in accordance with the methods outlined in Question 2 and elsewhere, attaching thereto the proportionate amounts of adjustment affecting each individual member of the partnership. On the determination of the net result, each individual partner shall file a claim for refund (if any refund is due), or in the event that the claimin abatement was in excess of the actual losses sustained, each individual will remit to the Collector of his District, his share of the additional amount of tax ascertained from the adjusted statement, with interest at the rate of 1% per month from the time of deduction from the second installment to the time when such remittance is made. (For source and authority see ¶ 3356 and ¶ 3357.)

(T. D. 2850.)

3371 **Instructions Relative to Acceptance of Certificates of Indebtedness**
435 **in Payment of Income and Profits Taxes Due June 16, 1919.**—
2428 Income and profits taxes due June 16, 1919, may be paid in Treasury
3128 certificates of indebtedness of Tax Series of 1919, dated August 20, 1918, maturing July 15, 1919, Series T.2, dated January 16, 1919, maturing June 17, 1919, and Series T.3, dated March 15, 1919, maturing June 16, 1919. No other certificates of indebtedness will be accepted in payment of the taxes due on said date. Certificates of the three series mentioned will be accepted by collectors of internal revenue at par, without interest, when tendered in amounts not in excess of the amount of such taxes due June 16, 1919. They will be so accepted at any time on or before June 16, 1919. If so accepted before June 16, 1919, full interest to June 16, 1919, will be paid as below stated.

3372 Coupons maturing on June 16, 1919, should be detached from certificates of Series T.3, and coupons maturing on or before May 15, 1919, should be detached from certificates of the Tax Series of 1919, before presentation to the collector, and should be separately presented for payment in the ordinary course when due. Coupons maturing July 15, 1919, must, however, be attached to certificates of the Tax Series of 1919 and surrendered to the collector with such certificates for cancellation; and collectors will not accept any certificates of the Tax Series of 1919 which have not attached thereto the coupon No. 5 maturing July 15, 1919.

3373 Accrued interest on certificates of Series T.2 (which were issued without coupons attached) from January 16, 1919, to June 16, 1919, and accrued interest on certificates of the Tax Series of 1919 from May 15, 1919 (the last coupon payment date), to June 16, 1919, will be remitted to the taxpayer by the Federal Reserve Bank by check and the collector must furnish to the Federal Reserve Bank the name and address of the taxpayer and the amount and serial numbers of the certificates presented in each case.

3374 The procedure above provided will automatically adjust accrued interest in respect of all Treasury certificates of indebtedness used in payment of taxes due June 16, 1919, whether presented on or before said date and no other payment or credit will be allowed or made on account of interest in connection therewith.

3375 Interest on Treasury certificates accepted in payment of taxes ceases to accrue on (a) the date of the maturity of the certificates, or (b) the date the tax is due—whichever of said dates be earlier. The provisions hereof in relation to the payment of interest to June 16, 1919, do not apply to Treasury certificates of indebtedness accepted in payment of taxes due prior to that date. Any Treasury certificates of indebtedness accepted in payment of taxes becoming due before June 16, 1919, must be dealt with separately, and accrued interest will be paid only to date the tax the was due and upon surrender with the certificates of any coupons maturing subsequent to the date the tax was due. Collectors must specially notify Federal Reserve Banks in each case when Treasury certificates are accepted in payment of taxes becoming due prior to June 16, 1919. The 15th day of June being a Sunday, the Bureau of Internal Revenue has ruled that the taxes which by the terms of the Revenue Bill of 1918 are due on that date become due on June 16th.

3376 In order to avoid unnecessary dislocation of funds, it is of importance that Treasury certificates of indebtedness of the three series mentioned be used by taxpayers to the utmost extent possible in payment of their taxes, in preference to making cash payment of their taxes, and Federal Reserve Banks and collectors of internal revenue should use every effort to induce taxpayers who are the holders of such certificates to make such use of them and to facilitate such use in every manner in their power.

3377 The instructions to collectors dated December 9, 1918 (T. D. 2778), issued by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury, and the instructions to Federal Reserve Banks dated December 9, 1918, issued by the Treasurer of the United States and approved by the Assistant Secretary of the Treasury, not inconsistent herewith, remain in full force and effect.

3378 There seems to be no reason to anticipate that the amount of taxes paid as of June 16, 1919, will exceed the amount of Treasury certificates maturing on or about that date. It seems that there will be no unexpended cash proceeds arising from the payment of income and profits taxes on June 16, 1919, and therefore no redeposits will be made; nor will payment of income and profits taxes by credit be permitted.

3379 Collectors of internal revenue will, however, be instructed to deposit checks received on and after June 1, 1919, in payment of income and profits taxes, with Federal Reserve Banks and branches, following to that extent substantially the procedure adopted in March. As to this procedure detailed instructions will follow. (T. D. 2850 signed by Commissioner Daniel C. Roper, and dated May 28, 1919.)

(T. D. 2851.)

3380 **Authority of Collectors to Accept Uncertified Checks.**—Section 1314,
435 Revenue Act of 1918, provides as follows:
2428 "That collectors may receive * * * uncertified checks in
3130 payment of income, war-profits and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered."

3381 The following regulations apply to all Internal Revenue taxes except those payable by stamp:

1. *Payment of tax by uncertified checks.*—Collectors may accept uncertified checks in payment of taxes, except those payable by stamp, provided such checks are collectible at par, that is, for their full amount, without any deduction for exchange or other charges. The collector will stamp on the face of each check before deposit the words, "This check is in payment of an obligation to the United States and must be paid at par. No Protest," with his name and title. The day on which the collector receives the check will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If one check is remitted to cover two or more persons' taxes, the remittance must be accompanied by a letter of transmittal stating (a) the name of the drawer of the check; (b) the amount of the check; (c) the amount of any cash, money order or other instrument included in the same remittance; (d) the name of each person whose tax is to be paid by the remittance; (e) the amount of the payment on account of each person; and (f) the kind of tax paid.

3382 2. *Procedure with respect to dishonored checks.*—If the bank on which any such check is drawn should refuse to pay it at par, the check should be returned through the depositary bank and be treated in the same manner as a bad check. All expenses incident to the attempt to collect such a check and the return of it through the depositary bank must be paid by the drawer of the check to the bank on which it is drawn, since no deduction can be made from amounts received in payment of taxes. If any taxpayer whose check has been returned uncollected by the depositary bank should fail at once to make the check good, the collector should proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is also not released from his obligation until the check has been paid. (T. D. 2851, signed by Commissioner Daniel C. Roper, and dated May 28, 1919.)

(L–Mim. 2143.)

3383 **Withholding as to Income from Securities whose Owner is Un-**
2996 **known; Meaning of Term "Highest Applicable Rate."**—It seems
3321 that there has been some misunderstanding as to the meaning of the following sentence in Article 361, Regulations 45:—"Withholding in all cases at the highest applicable rate is also required from interest or bonds or other securities where the owner of such securities is unknown to the withholding agent."

3384 The "highest applicable rate" as used above is (a) 2 per cent on interest upon bonds or other obligations of domestic or resident foreign corporations containing a so-called tax-free covenant clause; (b) 8 per cent in the case of fixed or determinable annual or periodical income (other than dividends from corporations liable to the income tax and interest on corporate bonds containing a tax-free covenant clause) payable to an unknown owner. (L–Mim. 2143, signed by Commissioner Daniel C. Roper, and dated June 2, 1919.)

(Amendment to T. D. 2847.)

3385 **Donations to the Red Cross or other War Activities by Corporations.**
3345 —[Comment: T. D. 2847 has been reprinted by the Government with a foot-note reading as follows:]

This Treasury Decision should be substituted for the previous mimeograph issue of T. D. 2847, the words "although such contributions may be made to the Red Cross or other war activities" appearing in the last paragraph [¶3351] thereof having been corrected to read "even though such contributions are made to the Red Cross or other war activities." (T. D. 2847, signed by Commissioner Daniel C. Roper, and dated May 24, 1919.)

(T. D. 2856.)

3386 **An Extension of Time for Filing Returns of Partnerships, Personal**
3329 **Service Corporations and Corporations Having a Fiscal Year Ending Either on January 31, February 28, March 31, or April 30*, 1919.**—In view of the fact that the necessary forms are not yet available, a further extension of time to July 15, 1919, is hereby granted to partnerships and personal service corporations having a fiscal year ending January 31, February 28, March 31, or April 30*, 1919. Corporations other than personal service corporations, having a fiscal year ending January 31, February 28, March 31, or April 30*, 1919, are hereby granted an extension to July 15, 1919, if they have prior to the date of this decision filed tentative return on Form 1031–T, paying one-fourth of the estimated tax, or if they shall on or before June 15, 1919, file tentative return on 1031–T, paying one-fourth of the estimated tax. Any deficiency in the first installment as shown by the completed return must be paid with interest thereon from the original due date at the rate of one-half of one per centum a month at the time of filing the completed return. *See ¶3388.

3387 This extension, in the case of corporations, shall not operate to extend the due date of any installment of tax after the first. In the case of corporations filing 1031–T, the time for filing a completed return is automatically extended as above but not beyond the due date of the second installment of the tax. The second installment will be due five and one-half months after the close of the corporation's fiscal year ending in 1919. (T. D. 2856, signed by Commissioner Daniel C. Roper, and dated June 7, 1919.)

3388 **Extension of Time for Filing Returns of Partnerships, Personal**
3386 **Service Corporations and Corporations Having a Fiscal Year Ending on April 30, 1919.**—[Comment: The words "or April 30, 1919" appearing in T. D. 2856 [¶3386] were inadvertently inserted. Our understanding to this effect has been confirmed, orally, by the Bureau of Internal Revenue.—The Corporation Trust Company.]

(T. D. 2857.)

3389 **Original Subscription to Victory Notes.**—For the purposes of the addi-
3179 tional tax exemption for Liberty Bonds granted by Section 2 (b)
3326 of the Victory Liberty Loan Act, approved March 3, 1919, Victory notes of either series issued upon conversion of Victory notes of the other series which were originally subscribed for by any taxpayer will be deemed to have been originally subscribed for by such taxpayer. (T. D. 2857, signed by Commissioner Daniel C. Roper, and dated June 7, 1919.)

(T. D. 2859.)

3390 **Amendment to Paragraph Numbered (3) of Article 184, Final Edition**
2924c **of Regulations 45, Dealing with the Cost of War Facilities which may be Amortized.**—The paragraph numbered (3) in article 184 of the final edition of regulations 45 which reads as follows:

"(3) In the case of other property the basis is the estimated reproduction cost as of April, 1919, of such property in its then condition. In the final determination such cost will be ascertained under stable postwar conditions, without reference to such date."

is hereby amended to read as follows:

"(3) In the case of other property the basis for amortization calculation shall be the estimated value of the property to the taxpayer in terms of its actual use or employment in his going business, such value in no case to be less than the sale or salvage value of the property, provided, however, that in no case shall the preliminary estimate (for purposes of returns to be made in 1919) of the amount of such amortization exceed 25% of the cost of the property. In the final determination the amount of the amortization allowance will be ascertained upon the basis of stable postwar conditions under regulations to be promulgated when these conditions become apparent."

(T. D. 2859, signed by Commissioner Daniel C. Roper, and dated June 10, 1919.)

3391 **Amortization Claims for 1918 and for 1919: Amended Returns**
2924 **Involving Amortization.**—Reference is made to your letter of May 21, 1919, requesting information relative to the application of the provisions of Section 214 (a) paragraph 9, of the Revenue Act of 1918, and Articles 181 to 188 of Regulations 45, final edition, to the 1918 and 1919 returns of taxpayers.

3392 Your questions are answered in the order submitted as follows: (1) A claim for amortization applicable to the portion of the calendar year 1918 covered by the return of the taxpayer for the taxable year 1918 shall be included in such return, and if such amortization is not claimed therein it may not be taken in the return covering the taxable year 1919. The return for the taxable year 1919, shall provide only for the proper amortization applicable to such taxable year ascertained in accordance with the

provisions contained in Article 185 of Regulations 45. However, in cases where it will be impracticable to accurately determine the amortization during the calendar year 1919, any returns made during such period should include amortization allowances tentatively determined in accordance with Articles 184 and 185 of Regulations 45.

3393 (2) Returns made for the taxable year 1918, in cases where the taxpayers are entitled to amortization claims, should include such claims ascertained as provided in the preceding paragraph, and if subsequently the amortization as finally determined differs essentially from the amount claimed in the returns filed, then amended returns should be made. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated June 9, 1919.)

3394 Duties and obligations of employers, in connection with withholding, in the case of non-resident aliens employed in the United
2976
3147 States.—Reference is made to your letter dated April 15, 1919, containing the following inquiries:

"1. From what date are employers responsible for deductions on nonresident aliens as defined under Treasury Decision 2794? Should the tax have been withheld on this basis during 1918?

"2. * * * * * .

"3. * * * * * .

"4. What should be done with Form 1078 when signed by alien? Should the employer retain it as authority for not withholding tax, or should it be sent to the Collector, and if so, when?"

3395 Referring to your first inquiry you are advised that employers will be held liable for the deduction of income tax from salaries, wages, or other fixed or determinable income paid to nonresident aliens since September 17, 1915, the date of issuance of Treasury Decision 2242 [¶489, ¶491, ¶493], defining a nonresident alien and prescribing certificate of residence, Form 1078. Employers should be governed by Articles 311 to 316, inclusive, Regulations 45, as to liability to withhold income tax during 1918 from wages paid to alien employees.

3396 Referring to your second inquiry you are advised that eight per
3003 cent income tax is required to be withheld by the employer from wages paid to nonresident alien employees only on and after February 25, 1919. As nonresident aliens were subject to a normal tax of twelve per cent for 1918, and only two per cent was required to be withheld during that year, the balance of tax due should be accounted for in the individual income tax returns.

* * * * * * * * * * *

3397 Referring to your fourth inquiry you are advised that every employer with whom affidavits of claim of Form 1078 are filed by employees, should make a record thereof and forward the certificates to the Commissioner of Internal Revenue, Sorting Division, Washington, D. C., not later than the twentieth day of the month succeeding that during which such certificates were received. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated May 21, 1919.)

3398 Duties and obligations of employers, in connection with withholding, in the case of non-resident aliens employed in the United States.—Reference is made to your letter dated March 25, 1919, transmitting a copy of your letter dated February 28, 1919, in which the following questions are submitted with respect to the duty of operators of bituminous coal mines to withhold income tax from salaries, wages and other compensation paid to nonresident aliens employed in this country.

2976 3147

"1. For what years will the Department attempt to make collection of such items?

"2. In the absence of any record now existing as to the nationality or intentions of employees who have left the service of a person or corporation which employed them during past years, what action on the part of the employers will be necessary to relieve them from any further liability for this tax? Is not the burden of proof on the Government in this case?

"3. Will a canvass of the present employees with a view to ascertaining their nationality or intentions of becoming resident taxpayers, and a collection of the taxes due from them be a satisfactory solution of the case? If so, how far back should employers attempt to make this collection?

"4. It is customary in a great many mining districts to let out a certain portion of a mine to some miner who is usually termed a contractor who employs additional labor in the production of coal from the section of the mine assigned to him. These men, usually termed "back hands" sometimes do not appear upon the payroll and are very frequently not officially known to the operator or employer. Who is responsible for the collection in this case, the operator or the contractor? The operator frequently does not know the amount of the earnings of the 'back hand' or laborer employed by the contractor and the latter usually keeps no books of account.

"5. Many employees, not only in the mining industry but in other industries, are known only by number. Will it be necessary to ascertain their names and intentions as to residence?

"6. Does the failure of the employer to make such collections make him liable for the full amount of the tax? If so, how far back of the present will the department attempt to make collections, and in the absence of specific information as to the nationality of past employees, upon what evidence will they base their action during the past period?"

3399 In reply to your first inquiry you are advised that the Department is not limited to as years in regard to investigations relative to the liability of employers to deduct income tax at the source from fixed or other determinable income paid to nonresident aliens as provided by the Revenue Act of 1918 and the acts for prior years. No effort will be made to hold employers of nonresident aliens liable for tax prior to the issuance of Treasury Decision 2242 [¶489, ¶491, ¶493], September 17, 1915, which defined a nonresident alien and not then if such nonresident alien had been employed continuously by the same person or corporation for a period of three months or more.

3400 In reply to your second inquiry you are advised that aliens employed in the United States are prima facie regarded as nonresident aliens, and in case where withholding has not occurred it will be necessary for the employer to furnish written proof of facts which overcome that presumption. The burden of proof is on the employer. The records of a corporation, such as the cancelled checks representing payment to its employees, and the payrolls, are held to constitute written proof.

3401 Referring to your third inquiry you are advised that if an alien has been living in the United States for as much as one year immediately prior to the time he entered the employment of the withholding

agent, or if he has been regularly employed by an individual resident in the United States or by a resident corporation in the same city or county for as much as three months immediately prior to any payment by the employer, he may be treated as a resident in deciding as to the necessity of withholding part of such payment, provided no facts are known to the employer showing that he is in fact a transient. The facts with regard to the length of time the alien has thus lived in this country or has been so regularly employed may be established by the certificate of the alien. The employer may also obtain evidence to overcome the prima facie presumption of nonresidence by securing from the alien Form 1078, revised, properly executed or an equivalent certificate of the alien establishing residence. Having secured such evidence from the alien, the employer may rely thereon unless the statement of the alien was false and he has reasonable cause to believe it was false, and may continue to rely thereon until the alien ceases to be a resident.

3402 Referring to your fourth inquiry you are advised that in case the owner or operator of a mine leases a portion thereof to a contractor whose operations are separate and distinct from that of the corporation, the individuals being actually employed by the contractor, the duty to withhold is that of the contractor and not of the corporation.

3403 Referring to your fifth inquiry you are advised that in every case where the employee is a nonresident alien, withholding is required, except for 1918, in which case a claim for exemption may be filed in accordance with the provisions of Article 307, Regulations 45. The name and address of such employee should be secured regardless of the fact that for the convenience of the operator, the individual is known by number.

3404 Referring to your sixth inquiry you are advised that this question appears to be covered by the answer to your third inquiry.

3405 Replying to the next to the last paragraph of your letter you are advised that the employer who fails to withhold and account for income tax with respect to income paid to alien employees, may submit any evidence which will substantiate the fact that such employees are residents of the United States within the meaning of Article 312 to 316 of Regulations 45. As to what action will be taken by the Bureau in regard to the collection of income tax at the source, you are advised that any investigations deemed necessary for the proper administration of the revenue acts will be made in order that taxpayers may satisfy their obligations to the Government.

3406 Referring to the inquiry contained in your letter of March 25, 1919, in regard to aliens who have been employed in this country by the corporation for a period of three months, you are advised that such circumstances are held to constitute the individual a resident of the United States for purpose of withholding, and no further tax is required to be withheld at the end of that period provided no facts are known to the employer tending to show that the individual is a transient as described in Article 312, Regulations 45. The amount of tax withheld during the three months should not, however, be refunded to the employe, but should be included in the corporation's annual list return of income tax withheld at the source, Form 1042. (Letter to W. B. Reed, Accounting Secretary, National Coal Association, Washington, D. C., signed by Commissioner Daniel C. Roper, and dated May 26, 1919.)

3407 Constructive receipt of income during the taxable year by a dece-
2862c dent prior to his death.—Reference is made to your letter of recent
2862d date, relative to the proper treatment, for income tax purposes,
3019 of income received after the death of an individual in 1918. You state that you represent a decedent who died on June 25, 1918, and whose accounts were kept upon a cash receipt and disbursement basis. On June 1, 1918, dividends were declared on stock which he owned but which were not paid until July 1, 1918, and interest accrued on bonds and mortgages during his lifetime was not paid until after his death. The question presented is whether the dividends and interest referred to should be reported in the return for the period from January 1, 1918 to the date of his death or in the return for the period from the date of his death to December 31, 1918. In this connection you are advised that under Section 213 of the Revenue Act of 1918, income which is credited to the account of or set apart for a taxpayer and which may be drawn upon by him at any time is subject to tax for the year during which so credited or set apart, although not yet actually reduced to possession. Where interest coupons have matured, but have not been cashed, such interest payment, though not collected when due and payable, is nevertheless available to the taxpayer and should be included in his gross income for the year during which the coupons matured. Dividends on corporate stock are subject to tax when set apart for the stockholder, although not yet collected by him. Similarly interest on mortgages should be included in gross income for the year in which it becomes due and payable. (Regulations 45, Articles 53 and 54.) Therefore, if the income referred to in your letter was made available to the decedent during 1918 so that it could have been drawn upon by him prior to his death it should be reported in the return for the period from January 1, 1918 to June 25, 1918. (Letter to Douglas, Armitage and McCann, New York, N. Y., signed by J. H. Callan, Assistant to the Commissioner (by P. T. Talbert), and dated May 31, 1919.)

3408 Returns of information as to payments to employees in board and
3055 lodging, etc.—Reference is made to your letter of May 19, 1919, in which you present the following inquiry: "As Article 1062, Regulations 45, appeared in the preliminary draft, it contained two sentences not included in the Revised and complete regulations. Are we to understand from the omission of the last two sentences that living quarters and board are to be ignored in making returns of information?" It is assumed that the article of the regulations to which you have reference is Article 1072, which relates to the filing of returns of information in regard to payments made to employees. The portion of Article 1072 of the Preliminary Regularions No. 45, to which you refer, was omitted from the last edition of the regulations for the reason that the subject treated in this part of the original article is now covered by Article 33 [¶2842a], which was not contained in the preliminary edition. As stated in the first part of Article 1072, returns of information are required for "all employees to whom payments exceeding $1000 a year are made, whether such total sum is made up of wages, salaries, commissions or compensation in any other form," which includes those cases where board and lodging are consudered a part of the compensation for the services rendered. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated June 2, 1919.)

(T. D. 2858.)

Status of dividends received by a partnership when distributed to the members thereof, under the Act of 1913.

1. *Taxability of income derived from or through partnership.*
   A member of a partnership need not include as a part of his net income subject to normal tax such of his income derived from or through a partnership as had been received by the partnership in the shape of dividends on stocks owned by it in corporations taxable upon their net income.
2. *Construction of the Act.*
   The law is so framed as to deal with the gains and profits of a partnership as if they were the gains and profits of the individual partners.
3. *Judgment for defendant.*
   Judgment is rendered in favor of defendant.
4. *Judgment of District Court affirmed.*
   The judgment of the District Court has been affirmed by the Circuit Court of Appeals.

3409 The appended decision of the District Court of the United States for the Northern District of Ohio, Eastern Division, in the case of United States of America, plaintiff, v. Harry Coulby, defendant (251 Fed. 982), which was on January 7, 1919, affirmed by the United States Circuit Court of Appeals, Sixth Circuit, is published for the information of internal revenue officers and others concerned. (T. D. 2858, signed by Acting Commissioner J. H. Callan, and dated June 9, 1919.)

IN THE DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OHIO, EASTERN DIVISION.

(Affirmed by Circuit Court of Appeals, January 7, 1919.)

United States of America, plaintiff, vs. Harry Coulby, defendant.

(Memorandum.)

(June 26, 1918.)

3410 WESTENHAVER, District Judge: This is an action at law to recover $588.45, with interest and penalties thereon, alleged to be due as unpaid income tax for the nine months ending December 31, 1913 under the Federal income tax law of 1913. A jury trial was waived by the parties and the case has been submitted to me for decision upon an agreed statement of facts. Briefly the facts are these:

3411 The defendant, during the period in question, was a member of a partnership by the name of Pickands, Mather & Co. This partnership was then the owner of stocks in certain corporations which were taxable upon their net income under the provisions of section G of the income-tax law. Dividends were declared, and paid by these corporations upon the stocks held therein by the partnership. The defendant, in making return of his income for taxation, included as a part of his gross income his share of the profits of the partnership, but deducted therefrom such part thereof as was derived by or through the partnership from dividends on stocks in these corporations taxable upon their net income.

3412 Later, on or about June 27, 1917, the Commissioner of Internal Revenue examined the defendant's return and disallowed the deductions thus made and assessed the normal tax of one per cent against the defendant on such deduction. The item of $588.45 represents that assessment.

3413 The exact question presented for decision is whether or not a member of a partnership must include as a part of his net income subject to the normal tax, such part of his income derived from or through a partnership which has been received by that partnership as dividends on stocks owned by it in corporations taxable upon their net income under section G of the Federal income tax law of 1913.

3414 Plaintiff's contention that profits thus derived are a part of the partner's net income, and subject to the normal tax, is based on the following paragraph of Section D:

Provided further, That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section.

3415 An examination of the entire income-tax law convinces me that plaintiff's contention is erroneous. Section B defines what shall constitute the net income of a taxable person; it includes his gains, profits and income derived, not merely from salaries, wages or compensation for personal service, but also from business, trade, commerce, or sales or dealings in property, or the transaction of any lawful business carried on for gain or profit. This plainly includes such gains and profits derived from or through a partnership.

3416 Section B also states what deductions shall be made from the gross income of a taxable person in order to ascertain the net income for the purpose of levying the normal tax. Among these deductions is the amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income.

3417 Section provides G for the normal tax upon the entire net income of corporations. It expressly excludes partnerships therefrom. This net income of corporations is subject only to the normal tax, such as is levied on the income of any natural taxable person, and not to the additional tax provided for by subdivision 2 of section A. This income from corporations received by a natural taxable person is exempt only from the normal income tax, and not from such additional tax.

3418 Taking these provisions as a whole, the paragraph of section D relating to partnerships above quoted, must be considered and construed in the light of the general scheme thus outlined. No provision is anywhere made requiring a return to be made by a partnership upon its income. This is true notwithstanding section D requires copartnerships, having the control, receipt, disposal or payment of fixed income of another person subject to tax, to make a return in behalf of that person and to deduct the same. This provision deals with the fiduciary relationship of guardians, trustees, executors, and so forth, having the possession and control of other person's property; but, as regards an ordinary partnership and its ordinary business, the statement is true that no return is required to be made under the Federal Income Tax Law of 1913 by a partnership.

3419 Partnerships are expressly excluded from section G, requiring returns and payment of the normal tax by corporatoins. If Congress had intended that partnerships, as such, should be taxable upon their net income, the logical place to have so provided would have been in section G, and to have excluded from the net income of a natural taxable person, subject to the normal tax, that part of his income derived from a partnership just as is provided with respect to his income derived from a corporation.

3420 This law, therefore, ignores for taxing purposes the existence of a partnership. The law is so framed as to deal with the gains and profits of a partnership as if they were the gains and profits of the individual partner. The paragraph above quoted so provides. The law looks through the fiction of a partnership and treats its profits and its earniugs as those of the individual taxpayer. Unlike a corporation, a partnership has no legal existence aside from the members who compose it. The Congress, consequently, it would seem, ignored, for taxing purposes, a partnership's existence, and placed the individual partner's share in its gains and profits on the same footing as if his income had been received directly by him without the intervention of a partnership name.

3421 It follows from these considerations that legally the defendant's share of the gains and profits of the Pickands, Mather & Company, derived from corporations taxable on their net incomes, is to be treated as if the same had been received by him directly from the taxpaying corporations.

3422 The contrary contention is based on a literal reading of the words "the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and tax paid." This sentence follows language plainly ignoring the existence of partnerships for taxing purposes. Section B had already provided what should be regarded as net income in language sufficiently comprehensive to include the gains and profits from business carried on in a partnership name. The words just quoted evidently apply only to the possibility that a partnership might not divide its gains and profits, but retain them in the firm name or business. It was to meet this possibility that these words were added, and not to provide an unequal and unique method of taxing a partner's gains and profits from a partnership.

3423 The contention to the contrary is narrow and literal, even if not lacking in plausibility. It is a contention, however, contrary to the spirit and general policy of the Act; it destroys uniformity and equality and should not be adopted unless required by the express language of the statute. In my opinion, the language of the statute does not so require. but, on the contrary, when the entire act is examined, it does give a right to the deduction.

3424 Counsel for plaintiff invoke the legal principles, that an exemption in a tax law must be clearly expressed and will not be implied; that power to tax will not be taken away unless the law-making power has done so in clear and unequivocal language and that, inasmuch as uniformity and equality is difficult, if not impossible of attainment in tax laws, the inequality which might result from the Government's contention should not be permitted to control the language of the law. Numerous authorities illustrating these legal principles are cited. These principles are well settled, and, I assume ample power in Congress to have assessed defendant's income derived from a partnership in the manner contended for. It is my opinion, however, that Congress has not done so.

3425 Counsel for plaintiff call attention to the fact that the Federal Income Tax Law of September 8, 1916 now provides that members of partnerships shall be allowed credit for their proportionate share of partnership gains and profits derived from corporations taxable on their net income, and urge that this is a change of the law, and evidences a belief of the law-making body that the 1913 Income Tax Law had provided differently. I do not agree with this contention. In my opinion, this provision was inserted in the 1916 Act to put at rest the present con-

troversy rather than to change the law, and is to be regarded only as a legislative recognition of the scope and intent of the prior law. The applicable authorities, in my opinion, are the following: Bailey v. Clark (21 Wall. 284); Johnson v. Southern Pacific Company (196 U. S. 1); Wetmore v. Markoe (196 U. S. 68).

3426 Judgment is rendered in favor of defendant. An exception may be noted on behalf of plaintiff.

3427 **Dividends received from foreign corporations subject to income**
1125 **tax are exempt from normal tax.**—Receipt is acknowledged of
2698 your letter dated May 9, 1919, in which you request advice as to whether Article 301 of Regulations 45 contemplated that the normal tax imposed by Section 210 of the Revenue Act of 1918 does not apply to dividends received from foreign corporations deriving any income whatever from sources within the United States, without regard to the character of that income and also without regard to the proportion which such income bears to the entire income of the corporation. In reply you are advised that Section 216 (a) of the Act upon which Article 301 of the Regulations is based. provides that for the purpose of the normal tax only there shall be allowed as a credit "the amount received as dividends from a corporation which is taxable under this title upon its net income." [See ¶2102 also.] Therefore, Article 301 of the Regulations contemplates that the normal tax imposed by Section 210 of the Act does not apply to dividends, regardless of the amount of such dividends, received from a foreign corporation taxable upon income from sources within the United States, however small such income may be. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated June 9, 1919.)

3428 **Additional capital stock tax imposed by Revenue Act of 1918 as**
2037 **a deduction.**—In reply to your letter of May 21, 1919, you are advised that the capital stock tax imposed by Section 1000 (a) of the Revenue Act of 1918, may, for the purpose of computing other income subject to income, excess profits and war profits taxes, be deducted from the gross income for the year for which such taxes accrue, if accounts of the corporate taxpayers are kept on the accrual basis, or may be deducted from gross income for the year in which paid, if accounts are kept on the disbursements basis. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated June 7, 1919.)

(T. D. 2865.)

3429 **Interest on Victory notes.**—All interest accrued on 4¾ per cent.
3169 Victory notes at the date of any conversion by the taxpayer into 3¾
3326 per cent. Victory notes will, for the purposes of computing net income, be deemed to be interest upon 4¾ per cent. Victory notes, and will be entitled only to the exemptions from taxation to which interest on 4¾ per cent. Victory notes is entitled. Any and all amounts received by any taxpayer from the United States by way of adjustment of accrued interest upon conversion of 4¾ per cent. Victory notes into 3¾ per cent. Victory notes will be deemed to be interest upon 4¾ per cent. Victory notes.

3430 All interest accrued on 3¾ per cent. Victory notes at the date of any conversion by the taxpayer into 4¾ per cent. Victory notes will, for the purposes of computing net income, be deemed to be interest upon 3¾ per cent Victory notes, and will be entitled to the exemptions from taxation to which interest on 3¾ per cent. Victory notes is entitled. (T. D. 2865, signed by Commissioner Daniel C. Roper and dated June 14, 1919.)

3431 613 2862d 2996 **Tax liability and withholding obligation on bond interest collected and paid in year subsequent to that in which the interest became due and payable.**—Income tax should be withheld from interest payments upon bonds at rates in force for year during which payment was actually made, although bond interest is held to represent income for year during which coupons became due and payable. Any tax withheld and paid to government in excess of taxpayer's liability may be adjusted through claim for refund. (Telegram to the Cleveland Trust Company, signed by Commissioner Daniel C. Roper, and dated June 9, 1919.)

(T. D. 2870.)

3432 1910 3107 **Amending Article 1567, final edition of Regulations 45, dealing with exchange of stock for stock having no par value, and fixing an aliquot part of the capital when required by statute to be stated, as the par value, for the purposes of Section 202, of such so-called "no-par-value" stock.**—The final edition of Regulations 45 is amended by changing Article 1567 [¶3107] to read as follows:

"Art. 1567. **Exchange of stock for other stock of no greater par value.**—In general, where two (or more) corporations unite their properties by either (A) the dissolution of corporation B and the sale of its assets to corporation A, or (b) the sale of its property by B to A and the dissolution of B, or (c) the sale of the stock of B to A and the dissolution of B, or (d) the merger of B into A, or (e) the consolidation of the corporations, no taxable income is received from the transaction by A or B or the stockholders of either, provided the sole consideration received by B and its stockholders in (a), (b), (c) and (d) is stock or securities of A, and by A and B and their stockholders in (e) is stock or securities of the consolidated corporation, in any case of no greater aggregate par or face value than the old stock and securities surrendered. So-called 'no-par-value stock' issued under a statute or statutes which require the corporation to fix in a certificate or on its books of account or otherwise an amount of capital or an amount of stock issued which may not be impaired by the distribution of dividends, will for the purpose of this section be deemed to have a par value representing an aliquot part of such amount, proper account being taken of any preferred stock issued with a preference as to principal. In the case (if any) in which no such amount of capital or issued stock is so required, 'no-par-value stock' received in exchange will be regarded for purposes of this section as having in fact no par or face value, and consequently as having 'no greater aggregate par or face value' than the stock or securities exchanged therefor." (T. D. 2870, signed by Commissioner Daniel C. Roper, and dated June 20, 1919.)

(T. D. 2869.)

3433 **Alien Seamen; Amendments to Articles 92 and 312 of Regulations 45.**—The final edition of Regulations 45 is amended by inserting immediately after Article 92 a paragraph to be known as Article 92a as follows:

3434 2877 Art. 92a. **When the wages of a non-resident alien seaman are derived from sources within the United States.**—While resident alien seamen are taxable like citizens on their entire income from whatever sources derived, nonresident alien seamen are taxable only on income from sources within the United States. Ordinarily, wages received for services rendered inside the territorial United States are to be regarded as from sources within the United States. The wages of an alien seaman earned on a coastwise vessel are from sources within the United States, but wages earned by an alien seaman on a ship regularly engaged in foreign trade are not to be regarded as from sources within the United States, even though the ship flies the American flag, or although during a part of the time the ship touched at United States ports and remained there a reasonable time for the transaction of its business. The presence of a seaman aboard a ship which enters a port for such purposes of foreign trade is merely transitory and wages earned during

that period by a nonresident alien seaman are not taxable. There is no withholding from the wages of alien seamen unless they are nonresidents within the rules laid down in Articles 311 to 315. Even in the case of a nonresident alien seaman, the employer is not obliged to withhold from wages unless those wages are from sources within the United States as defined above. As to when alien seamen are to be regarded as residents see Art. 312a.

3435 The final edition of Regulations 45 is amended by inserting im-
2973a mediately after Article 312 a paragraph to be known as Article 312a as follows:

Art. 312a. Alien Seaman, When to be regarded as residents.—In order to determine whether an alien seaman is a resident within the meaning of the income tax law, it is necessary to decide whether the presumption of nonresidence is overcome by facts showing that he has established a residence in the territorial United States, which consists of the States, the District of Columbia, and the Territories of Hawaii and Alaska, and excludes other places. Residence may be established on a vessel regularly engaged in coastwise trade, but the mere fact that a sailor makes his home on a vessel flying the United States flag and engaged in foreign trade is not sufficient to establish residence in the United States, even though the vessel, while carrying on foreign trade, touches at American ports. An alien seaman may acquire an actual residence in the territorial United States, within the rules laid down in Article 312 although the nature of his calling requires him to be absent from the place where his residence is established for a long period. An alien seaman may acquire such a residence at a sailor's boarding house or hotel, but such a claim should be carefully scrutinized in order to make sure that such residence is bona fide. The filing of Form 1078 (Revised), or taking out first citizenship papers is proof of residence in the United States from the time the form is filed or the papers taken out, unless rebutted by other evidence showing an intention to be a transient. The fact that a head tax has been paid on behalf of an alien seaman entering the United States is no evidence that he has acquired residence, because the head tax is payable unless the alien who is entering the country is merely in transit through the country. An alien may remain a nonresident although he is not in transit through the country. As to when the wages of alien seamen are subject to tax, see Article 92a. (T. D. 2869, signed by Commissioner Daniel C. Roper, and dated June 20, 1919.)

3436 **Refund of amounts withheld from nonresident alien, on status**
3406 **changing to that of resident.**—Reference is made to your telephone call in regard to a letter addressed to you under date of May 26, 1919, upon the subject of the withholding provisions of the Revenue Act of 1918. The inquiry was made as to whether the last sentence of that letter [¶3406], which is quoted here, is correct:

"The amount of tax withheld during the three months should not, however, be refunded to the employee, but should be included in the corporation's annual list return of income tax withheld at the source, Form 1042."

3437 In reply you are advised that where the status of an alien changes during the year from that of a resident to that of a nonresident, or from that of a nonresident to that of a resident, the status which exists at the end of the taxable year is the one which determines his right to exemption as to the whole year. Where an employer has withheld wages from a nonresident during part of the year and thereafter the employee became a resident (before the employer has paid over to the United States the amount withheld), the employer is authorized on receiving proof of the change to refund to the employee the amounts which had been withheld from him during the earlier part of the taxable year, while his status was that of a nonresident.

3438 The ruling contained in this letter supersedes all other rulings in con-
flict therewith. (Letter to W. B. Reed, Accounting Secretary, National Coal Association, Washington, D. C., signed by Commissioner Daniel C. Roper, and dated June 12, 1919.)

(T. D. 2871)

3439 Claims for refund or abatement; Procedure to be followed by collectors with respect to claims for refund or abatement—Extension
2472
3045 **of Treasury Decision 2688—Amendment to Article 1036, Regulations 45.**—(1) Claims for refund or for abatement, pertaining to tax returns which have not at the time been posted to an assessment list, will be numbered to agree with, attached to, and made a part of, the original return so that the total tax as posted on the assessment list will be the admitted tax liability of the taxpayer. If a taxpayer submits an amended return as a claim either for refund or for abatement before the original return has been listed, such amended return will be numbered to agree with and attached to the original return in the same manner. Similarly, errors or omissions in returns discovered by the collector prior to the posting operate as an amendment to the amount of tax liability shown by the return.

3440 In other words, all amendments or changes either increasing or decreasing the amount of tax liability and whether originated by the taxpayer or by the collector will be reflected on the face of the return itself and the posting to the assessment list will be of the correct amount. In this connection attention is called to the provisions of Mim. 2124.

3441 (2) Amended returns showing a reduced tax liability will not be acted upon by collectors if the original return has been previously entered on the assessment list. All claims pertaining to returns which have been listed for assessment must be submitted on Form 46, if the tax has been paid, or on Form 47, if the tax has not been paid.

3442 (3) The following classes of claims may be included on Form 751 (if for refund), or blanket Form 47 (if for abatement). Separate sheets properly designated of Forms 751 or blanket Forms 47 must be prepared for returns on file in the Commissioner's office and those on file in the collector's office:

(a) All claims for refund or abatement pertaining to Form 1040–A income returns for the calendar year 1918, or subsequent years.

(b) Errors in computation. (These include only mistakes in arithmetic.)

(c) Errors in *specific* exemptions on income returns. (These include such items as failure to deduct exemptions for dependents; the $2,000 exemption for corporations, etc.)

(d) Payments in excess of the total amount of tax due as shown by the return. (These include such cases as a remittance of $1,500 covering payment of a tax liability of $1,300, etc.)

(e) Amount previously paid on submission of a tentative income return in excess of the total tax liability shown by the final return.

(f) Duplicate payments or assessments.

(g) All claims for refund on account of nonrevenue remittances forwarded to the collector in error and deposited by him. (These include such items as state or municipal taxes sent to the collector and deposited by him as "unidentified," etc.)

3443 (4) All claims for refund or abatement other than those enumerated above will be forwarded to the Commissioner for settlement. However, *any* claim may be so forwarded whenever the collector does not feel absolutely certain of the law, regulations or precedent involved, or if his disbursing bond is insufficient to enable him to procure an advance on accountable warrant of the requisite amount of funds from which to make payment.

3444 (5) Before forwarding claims to the Commissioner for settlement certification must be made on the claim of the account number, the amount of tax originally due, the dates and amounts of all payments or other transactions affecting such amount, and the balance due as shown by the account on the list. All claims of this nature now on file in the collector's office and hereafter as received should be certified and forwarded immediately.

3445 (6) Claims submitted by taxpayers direct to the Commissioner will in future be referred to the collector for this certificate as to the status of the account on the assessment list. Until so certified by the collector such claims will not be settled. When certifying claims for refund the collector will make a notation in the "Remarks" column of the date and amount of the refund claim but no record will be made on the tax journals unless a credit balance exists in the taxpayer's account. In this case, the amount of the claim as certified will be posted to the list and recorded on the journal in the same manner as though payment were made by the collector.

3446 (7) In all cases where abatement claims are certified by the collector, notation will be made on the assessment list of the date on which the abatement claim was filed and the amount thereof, and on the daily journals, Form 769. (See paragraph 49, Manual of Revenue Accounting.)

3447 (8) Blanket claims for abatement of uncollectible items Form 53 may be filed by the collector as heretofore. The same record will be made on the tax journal and on the assessment list as in cases where the taxpayers submit such claims (the only difference being that in the first instance the claim originates with the taxpayer instead of with the collector).

3448 (9) The last two sentences of Article 1036, Regulations 45 (final edi-
3048 tion), are to be replaced by the following:

"In certain cases of overpayment by taxpayers the collector may repay the excess after allowance by the Commissioner of a claim for refund, made by the collector on Form 751. The cases in which refund is made through collectors are covered by specific provisions not herein incorporated. The Commissioner has no authority to refund on equitable grounds penalties legally collected."

3449 (10) All existing regulations in conflict with the above are hereby revoked. (T. D. 2871, signed by Commissioner, Daniel C. Roper, and dated June 21, 1919.)

(T. D. 2873.)

3450 **Bases of Computation of Net Income: Modification of Article 23,**
2834 **Regulations 45.**—Article 23, Regulations 45, is modified to read as follows:

3451 Art. 23. **Bases of Computation.**—(1) Approved standard methods of accounting will ordinarily be regarded as clearly reflecting income. A method of accounting will not, however, be regarded as clearly reflecting income unless all items of gross income and all deductions are treated with reasonable consistency. See Section 200 of the statute for definitions of "paid," "paid or accrued," and "paid or incurred." All items of gross income shall be included in the gross income for the taxable year in which they are received by the taxpayer, and deductions taken accordingly, unless in order clearly to reflect income such amounts are to be properly accounted for as of a different period. For instance, in any case in which it is necessary to use an inventory, no accounting in regard to purchases and sales will correctly reflect income except an accrual method. See Section 213 (a) [¶768] of the statute. A taxpayer is deemed to have received items of gross income which have been credited to or set apart for him without restriction. See Article 53 [¶2862c]. On the other hand, appreciation in value of property is not even an accrual of income to a taxpayer prior to the realization of such appreciation through conversion of the property.

3452 (2) For the taxable year 1918 the true income, computed under the Revenue Act of 1918 and—where the taxpayer keeps books of account—in accordance with the method of accounting regularly employed in keeping such books, shall in all cases be entered in the return, even though this results in apparent omissions or duplications of particular items of income or expense. In the ordinary case such omissions and duplications are more apparent than real and are likely to counterbalance one another, so that the change in the basis of reporting calls for no material adjustment. Where, however, the method previously employed by the taxpayer in determining his income subject to the tax, is materially different from the method regularly used by the taxpayer in keeping his accounts, or where for any reason the basis of reporting income subject to tax is changed the taxpayer should attach to his return a separate statement setting forth for the taxable year and for the preceding year the classes of items differently treated under the two systems, specifying in particular all amounts duplicated or entirely omitted as the result of such change. Where for example a taxpayer who, prior to 1918, has reported on the so-called receipts basis, is compelled under the above rule to report on the so-called accrual basis, he should include in the separate statement the following information:

First, (a) expenses paid before the end of the taxable year 1917 but not accrued at that date; (b) income accrued at the end of the taxable year 1917 but not received at that date; (c) expenses accrued at the end of the taxable year 1917 but not paid at that date; (d) income received before the end of the taxable year 1917 but not accrued at that date; and

Second, similar items as of the end of the taxable year 1916.

3453 If in the opinion of the Commissioner such information indicates that the returns for any previous years did not reflect the true income, amended returns for such years will be required.

3454 (3) A taxpayer who changes the method of accounting employed in keeping his books for the taxable year 1919 or thereafter, shall before computing his income upon such new basis for purposes of taxation secure the consent of the Commissioner. Application for permission to change the basis of the return shall be made at least 30 days in advance of the date of filing

return and shall be accompanied by a statement specifying the classes of items differently treated under the two systems and specifying all amounts which would be duplicated or entirely omitted as a result of the proposed change.

3455 (4) Bank discounts.—Banks which in the past have treated discount as income before it was actually earned and during the taxable year 1918 have placed the discount account upon an accrual basis, will be required to submit the information called for in paragraph 2 above and submit an amended return for the taxable year 1917, and will be permitted to submit (or the Commissioner may require) amended returns for all prior years during which the taxpayer was subject to tax. Additional taxes for prior years found to be due upon such reexamination will be paid upon the basis of the amended returns in the ordinary way. Where it appears that prior taxes have been paid in excess of the amount properly due, such excess will to the extent possible be credited against future income and profits taxes under the provisions of Section 252 [¶2488] of the Revenue Act of 1918. (T. D. 2873, signed by Commissioner Daniel C. Roper, and dated June 24, 1919.)

(*Decision.*)

(Act of October 3, 1913.)

Income from Stocks and Bonds located in the United States, Taxable to Nonresident Aliens.

SUPREME COURT OF THE UNITED STATES.

Emily R. DeGanay vs. Ephraim Lederer, Collector of Internal Revenue.	Certificate from the United States Circuit Court of Appeals for the Third Circuit.

[June 9, 1919.]

Mr. Justice Day delivered the opinion of the Court.

3456 The Act of October 3, 1913, c. 16. sec. 2a, subdivision 1, 38 Stat.
506 166, provides:

"That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided; and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere."

3457 Under this statutory provision a question arose as to the taxability of income from certain securities of Emily R. DeGanay, a citizen and resident of France. The District Court of the United States for the Eastern District of Pennsylvania held the income from the securities taxable. 239 Fed. 568 [¶2195, Income Tax Service—1917]. The case is here upon certificate from the Circuit Court of Appeals, from which it appears: That Emily R. DeGanay is a citizen of France, and resides in that country. That her father was an American citizen domiciled in Pennsylvania, and died in 1885, having devised one-fourth of his residuary estate, consisting of real property, to the Pennsylvania Company for Insurance on Lives and Granting Annuities, in trust to pay the net income thereof to her. She also inherited from her father a large amount of personal property in her own right free from any trust. This personal property is invested in stocks and bonds of corporations organ-

ized under laws of the United States and in bonds and mortgages secured upon property in Pennsylvania. Since 1885 the Pennsylvania Company has been acting as her agent under power of attorney, and has invested and reinvested her property, and has collected and remitted to her the net income therefrom. The certificates of stocks, bonds and mortgages had been and were in 1913 in the Company's possession in its offices in Philadelphia. The Company made a return of the income collected for the plaintiff for the year 1913 both from her real estate, which is not in controversy here, and her net income from corporate stocks and bonds and the bonds and mortgages held by her in her own right. The tax was paid under protest and recovery was sought by the proper action.

3458 The question certified is limited to the net income collected by virtue of the power of attorney from the personal property owned by the plaintiff in her own right.

3459 The power of attorney, which is attached to the certificate, authorizes the agent:

"To sell, assign, transfer any stocks, bonds, loans, or other securities now standing or that may hereafter stand in my name on the books of any and all corporations, national, state, municipal or private, to enter satisfaction upon the record of any indenture or mortgage now or hereafter in my name, or to sell and assign the same and to transfer policies of insurance, and the proceeds, also any other moneys to invest and reinvest in such securities as they may in their discretion deem safe and judicious to hold for my account; to collect and receipt for all interest and dividends, loans, stocks, or other securities now or hereafter belonging to me, to endorse checks payable to my order and to make or enter into any agreement or agreements they may deem necessary and best for my interest in the management of my business and affairs, also to represent me and in my behalf, to vote and act for me at all meetings connected with any company in which I may own stocks or bonds or be interested in any way whatever, with power also as attorney or attorneys under it for that purpose to make and substitute, and to do all lawful acts requisite for effecting the premises, hereby ratifying and confirming all that the said attorney or substitute or substitutes shall do therein by virtue of these presents."

3460 The question certified is: "If an alien non-resident own stocks, bonds and mortgages secured upon property in the United States or payable by persons or corporations there domiciled; and if the income therefrom is collected for and remitted to such non-resident by an agent domiciled in the United States; and if the agent has physical possession of the certificates of stock, the bonds and the mortgages; is such income subject to an income tax under the Act of October 3d, 1913?"

3461 The question submitted comes to this: Is the income from the stock, bonds and mortgages, held by the Pennsylvania Company, derived from property owned in the United States? A learned argument is made to the effect that the stock certificates, bonds, and mortgages are not property, that they are but evidences of the ownership of interests which are property; that the property, in a legal sense, represented by the securities, would exist if the physical evidences thereof were destroyed. But we are of opinion that these refinements are not decisive of the congressional intent in using the term "property" in this statute. Unless the contrary appears, statutory words are presumed to be used in their ordinary and usual sense, and with the meaning commonly attributable to them. To the general understanding and with the common meaning usually attached to such descriptive terms, bonds, mortgages, and certificates of stock are regarded as property. By state and federal statutes they are often treated as property, not as mere

evidences of the interest which they represent. In *Blackstone* v. *Miller*, 188 U. S. 189, 206, this court held that a deposit by a citizen of Illinois in a trust company in the city of New York was subject to the transfer tax of the State of New York and said: "There is no conflict between our views and the point decided in the case reported under the name of State Tax on Foreign Held Bonds, 15 Wall. 300. The taxation in that case was on the interest on bonds held out of the State. Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more archaic conditions. *Bacon* v. *Hooker*, 177 Mass. 335, 337."

3462 The Court of Appeals of New York recognizing the same principle, treated such instruments as property in *People ex rel, Jefferson* v. *Smith*, 88 N. Y. 576, 585:

"It is clear from the statutes referred to and the authorities cited and from the understanding of business men in commercial transactions, as well as of jurists and legislators, that mortgages, bonds, bills and notes have for many purposes come to be regarded as property and not as the mere evidences of debts, and that they may thus have a situs at the place where they are found like other visible, tangible chattels."

3463 We have no doubt that the securities, herein involved, are property. Are they property within the United States? It is insisted that the maxim *mobilia sequuntur personam* applies in this instance, and that the situs of the property was at the domicile of the owner in France. But this court has frequently declared that the maxim, a fiction at most, must yield to the facts and circumstances of cases which require it; and that notes, bonds and mortgages may acquire a situs at a place other than the domicile of the owner, and be there reached by the taxing authority. It is only necessary to refer to some of the decisions of this court. *New Orleans* v. *Stempel*, 175 U. S. 309; *Bristol* v. *Washington County*, 177 U. S. 133; *Blackstone* v. *Miller*, *supra; State Board of Assessors* v. *Comptoir National d'Escompte*, 191 U. S. 388; *Carstairs* v. *Cochran*, 193 U. S. 10; *Scottish Union & National Ins. Co.* v. *Bowland*, 196 U. S. 611; *Wheeler* v. *New York*, 233 U. S. 434, 439; *Iowa* v. *Slimmer*, 248 U. S. 115, 120. Shares of stock in national banks, this court has held, for the purpose of taxation may be separated from the domicile of the owner, and taxed at the place where held. *Tappan* v. *Merchants' National Bank*, 19 Wall. 490.

3464 In the case under consideration the stocks and bonds were those of corporations organized under the laws of the United States, and the bonds and mortgages were secured upon property in Pennsylvania. The certificates of stock, the bonds and mortgages were in the Pennsylvania Company's offices in Philadelphia. Not only is this so, but the stocks, bonds and mortgages were held under a power of attorney which gave authority to the agent to sell, assign, or transfer any of them, and to invest and reinvest the proceeds of such sales as it might deem best in the management of the business and affairs of the principal. It is difficult to conceive how property could be more completely localized in the United States. There can be no question of the power of Congress to tax the income from such securities. Thus situated and held, and with the authority given to the local agent over them, we think the income derived is clearly from property within the United States within the meaning of Congress as expressed in the statute under consideration. It follows that the question certified by the Circuit Court of Appeals must be answered in the affirmative.

So ordered.

Mr. Justice McReynolds took no part in this case.

(T. D. 2874.)

3465 **Simulation of income tax receipts—Decision of court.**—The appended
2465 opinion and charge of Judge Westenhaver in the District Court of the United States, for the Northern District of Ohio, Eastern Division, in the case of United States v. Pittaro, is published for the information of internal revenue officers and others concerned. [Captions only.]

3466 1. Receipts to taxpayers—Duty to issue.

The fact that Section 251 of the act of February 24, 1919, requires that full written or printed receipts be issued to taxpayers only on request therefor does not limit the collector's mandatory duty to issue them when requested and does not fail to make them documents required to be issued whenever requested, and the receipts are plainly documents required to be issued by such section.

3467 2. Same—Simulation or fraudulent execution.

Such receipts are documents required by provisions of the internal revenue laws and by regulations made in pursuance thereof, within the meaning of Section 3451, R. S., making it an offense to simulate or falsely or fraudulently execute or sign any document required by the internal revenue laws, or any regulation made in pursuance thereof, or to procure the same to be falsely or fraudulently executed, or to advise, aid in, or connive at such execution thereof.

3468 3. Same—Blanks.

The offense may be committed either where the receipt itself is a genuine receipt of the kind kept for that purpose in the office of the internal revenue collector but signed by the defendant without authority, or where, even if not a blank of the kind required to be kept, the blank itself is simulated or falsely or fraudulently executed and issued by a person who has no power or authority to do so.

3469 4. Same—Income tax receipts.

Where defendant was charged with violating Section 3451, R. S., in that he falsely, fraudulently, etc., simulated and executed and advised, aided in, and connived at the execution of certain income tax receipts required by Section 251 of the act of February 24, 1919, to be given when requested, what defendant told the persons who paid the money is not material, nor is the question whether or not such persons were subject to the payment of an income tax, or to assessment and levy of such tax.

(T. D. 2874, signed by Commissioner Daniel C. Roper, and dated June 23, 1919.)

3470 **Separate ownership certificates required for coupons of differing**
659 **maturity dates.**—Interest coupons represent income to taxpayer when
660 due and payable and are required to be reported in return for taxable
2862d year during which coupons matured. See Article 54, Regulations 45.
2998 Separate ownership certificate will be required for each interest coupon of different maturity date even though of same issue. (Telegram to the Southern Pacific Company, New York, N.Y., signed by Commissioner Daniel C. Roper, and dated June 24, 1919.)

3471 **Withholding at the source on interest on bonds having no tax-free**
2996 **covenant.**—Your telegram May 29. Bonds without tax-free covenant not permitted to be considered tax-free bonds at option of issuing corporations. ¶Corporation only allowed to withhold tax at rate of eight and ten per cent. from nonresident alien individuals and nonresident alien corporations respectively. ¶Corporation prohibited from paying tax on interest derived from such bonds when owned by citizens or residents of United States. (Telegram to the Farmers' Loan and Trust Company, New York, N. Y., signed by Commissioner Daniel C. Roper, and dated June 2, 1919.)

(T. D. 2876)

3472 **Income from stocks and bonds located in the United States, taxable**
3456 **to nonresident aliens.**—The appended opinion [For opinion in full, see ¶3456] of the United States Supreme Court in the case of Emily R. DeGanay v. Lederer, Collector, is published for the information of internal revenue officers and others concerned. (T. D. 2876, signed by Commissioner Daniel C. Roper, and dated June 25, 1919.)

3473 **Inventories of securities by a bank maintaining a department for the**
3113 **merchandising thereof.**—Reference is made to your letter of May 26, 1919, wherein you ask whether a bank that maintains a branch for the purpose of buying and selling securities has the full status of a recognized dealer in securities. ¶In reply, you are advised that a bank or other institution having a regularly established department for the merchandising of securities, even though that department is subordinate in importance to other departments, is entitled to the same benefit of using the basis provided for in Article 1585 [¶3113] of inventorying securities acquired and held for resale, as one who is solely a dealer in securities. ¶In so far as the bank or other institution carry on, with an established place of business, a department for the merchandising of securities, it is in respect of such department treated in the same way as any other security merchant. It should be noted, however, that the method of inventorying provided for in Article 1585 has no application and can not be extended to taxpayers simply buying and selling securities for investment or speculation. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated June 28, 1919.)

3474 **The use of Form 1001 by foreign governments.**—Answering your
3000 telegram July 5. Ownership certificate Form 1001 should be used in connection with interest payments upon domestic bonds owned by foreign governments. Enter amount on line six. (Telegram to the Guaranty Trust Company, New York, N. Y., signed by J. H. Callan, Assistant to the Commissioner, and dated July 7, 1919.)

(T. D. 2883)

3475 **Extension of Time for Filing Returns of Partnerships and Personal**
3386 **Service Corporations Having a Fiscal Year Ended Prior to May 31, 1919.**—An extension of time to August 15, 1919, for filing returns is hereby granted to partnerships and personal service corporations having a fiscal year ended January 31, February 28, March 31, or April 30, 1919. (T. D. 2883, signed by Commissioner Daniel C. Roper, and dated July 9, 1919.)

3476 **Sale of personal property on installment plan.**—Receipt is acknowl-
2849 edged of your letter of May 14, 1919, in which further reference is
3486 made to your letter of March 6, 1919, and office reply dated April 7, 1919, requesting information as to the treatment of amounts owing on installment accounts in connection with making income tax returns under the Revenue Act of 1918, in cases where only the profits are reported as actually realized as at the date of collection. It is assumed the taxpayer in question has heretofore made returns upon the basis of treating all installment sales as the equivalent of cash.

3477 In reply you are advised—(1) In accordance with provisions of Article 42 [¶2849] of Regulations No. 45, the first step to be taken by the taxpayer is to prepare and file as part of his return an amended balance sheet as at the date of the beginning of the taxable year, in which there shall be excluded from the surplus the unrealized gross profits upon the outstanding installment sales contracts at that date. Such amended balance sheet would be in substantially the following form:

Balance Sheet as at opening of fiscal year.

Assets.		*Liabilities.*	
Plant and Equipment.....	$.....	Capital stock (or individual's or partner's capital)	$.....
Less Depreciation.....	$.....	Mortgage indebtedness...	$.....
	——$		———
	$.....	[redacted]	$.....
Current assets:		Current Liabilities:	
Merchandise as per inv..	$.....	Bills payable.....	$.....
Instal. sales contracts...	$.....	Accounts payable.....	$.....
Notes receivable.....	$.....	Wages or other accrued items.....	$.....
Accounts receivable....	$.....		
Cash.....	$.....		
	———		———
Deferred Debit Items:		Deferred Credit Items:	
Insurance prem. paid in in advance.....	$.....	Unrealized gross profits upon installment sales contracts	$.....
Other items:		Surplus.....	$.....
	———		———
Total Assets.....	$.....	Total Liabilities.....	$.....

3478 (2) As from the beginning of the taxable year the following accounts should be set up:

3479 (a) *Goods purchased* which will be charged with the amount of inventory of the goods on hand at the beginning of the taxable year and with the expenditures for goods purchased during the year;

3480 (b) *Goods sold* (*cost value*), which will be credited with the cost value of all goods sold during the year;

3481 (c) *Installment Sales Contracts* which will be charged with the amount of the outstanding installment sales contracts at the beginning of the year and with the amount of installment sales contracts made during the year. This account will be credited with all cash collected during the year upon installment sales contracts and with the unpaid installments of defaulted or cancelled contracts.

3482 (d) *Unrealized Gross Profits on installment sales contracts*, which will be credited with the amount of unrealized gross profits upon the outstanding installment sales contracts at the beginning of the year, and with the amount of such unrealized gross profit upon installment sales contracts made during the year. This amount will be computed upon the basis of the total installment sales contracts reduced by the cost or inventory value of the goods

covered by the contracts, the remaining balance being the amount of the unrealized gross profits.

3483 (e) *Realized Profits on installment sales contracts* which will be credited from month to month, or at least at the end of the year, with the profits realized by collection upon installment sales contracts. Such profits should be computed by taking the same percentage of the total cash collections upon installment sales contracts during the period as the total unrealized profits on installment sales contracts bears to the total installment sales during the same year. Corresponding debits should be made to unrealized gross profits on installment sales contracts. Any necessary corrections to produce a more accurate result can be made as at the end of the fiscal year.

3484 It is believed that sufficient has been said above to indicate the use that is to be made of these special accounts and it is not necessary to discuss any of the other accounts which would normally be maintained.

3485 It will be noted that the foregoing plan which will be permitted upon an explicit statement of facts made to the Commissioner of Internal Revenue by a taxpayer engaged in merchandising upon the installment plan is not a change from an accrual basis to a cash received and paid basis. In the opinion of this office the income of a merchandising concern cannot be correctly reflected upon the latter basis, as the use of inventories is absolutely essential. The plan herein outlined is, therefore, merely a modification or adaptation of the ordinary accrual method of accounting as in the opinion of this office will enable the accounts of the taxpayer to clearly reflect his net income. Where in the past, another method has been used that has failed to reflect the taxpayer's net income an amended return or returns for such year may be made. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated July 9, 1919.)

3486 **Sale of personal property on installment plan.**—This Department is in
2849 receipt of your letter of July 8, 1919, requesting amplification of the
3476 instructions contained in Article 42 [¶2849] of Regulations No. 45 relative to the application of the rule prescribed in said Article that, in the sale or contract for sale of personal property on the installment plan, whether or not title remains in the vendor until the property is fully paid for, the income to be returned by the vendor will be that proportion of each installment payment which the gross profit to be realized when the property is paid for bears to the gross contract price.

3487 You are advised that the income from installment sales to be returned each taxable year shall consist of: (1) Such part of the installments received during the year (excluding those installments received on account of property repossessed during the year) as represents realized profit. Installments received during the year are to be included whether the sales were effected in an earlier or in the current taxable year. The profit on such installments shall be computed by taking the same percentage of the installment receipts as the gross profit to be realized on the total installment sales made during the taxable year bears to the gross contract price of all such sales. Any necessary corrections to produce a more accurate result can be made as at the end of the taxable year.

3488 (2) The profit, if any, on contracts which during the year have been cancelled, the goods being repossessed by the vendor. In such cases the entire profit realized on the cancelled contract, less so much thereof as has been returned in previous years, shall be returned as profit of the taxable year in which the goods are repossessed. In estimating such profit the value of the repossessed article (taken at its cost to vendor, less proper allowance for damage and use) shall be taken into account, as well as all installments received on account of the contract. Where an installment house

makes sales which are not on the installment plan, the profit on such completed sales will be determined in the regular manner prescribed in Sections 202 [¶1854] and 203 [¶1861].

3489 Illustration: In 1917 goods which cost $10,000 are sold on installment plan for $20,000. Collections on account: 1917, $10,000; 1918, $9,800. One contract, originally for $500, is defaulted in 1918 and the goods which cost the vendor $250 are repossessed, being then worth $50. Installments on this defaulted contract had been paid as follows: 1917, $100; in 1918, $200. The profits to be returned in 1918 are:

Under (1) 50% of $9,600 ($9,800 — $200)			$4,800
Under (2) total installments received		$300	
Less—Profit returned in 1917	$50		
Shrinkage in goods repossessed ($250 —$50)	200		
		$250	
			50
Total profit returnable in 1918			$4,850

3490 For simplicity, the above illustration omits sales in 1918. If sales in 1918 contain a different percentage of profit than those in 1917, some adjustment may be necessary as indicated in the text of the Regulations.

3491 If the vendor chooses as a matter of consistent practice to treat the obligations of purchasers as the equivalent of cash, such a course is permissible. Where the adoption of the method outlined above involves a change in the method of computing net income, the taxpayer's balance sheet should be adjusted conformably as of the date when the change is effected, and he should conform to the requirements of Article 23 as amended in Treasury Decision 2873 [¶3450]. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated July 10, 1919.)

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3492 **Duty of employer to determine status of alien employee.**—Reference
2976 is made to your letter dated June 18, 1919, in regard to Article 315,
3152 Regulations 45 which is quoted here: "(b) The employer may also obtain evidence to overcome the prima facie presumption of the nonresidence by securing from the alien Form 1078 (revised) or an equivalent certificate of the alien establishing residence. Having secured such evidence from the alien, the employer may rely thereon unless the statement of the alien was false and the employer has reasonable cause to believe it false, and may continue to rely thereon until the alien ceases to be a resident under the provisions of Article 314." It is noted that you have been advised by the Collector of Internal Revenue at Baltimore that it will be necessary for the employer to obtain Form 1078 for each year that a nonresident alien was employed.

3493 In reply you are advised that when Form 1078 is filed with the employer, the alien may be treated as a resident of the United States in so far as withholding of income tax at source is concerned and it is not necessary for the employer to secure from the alien employees new certificates, Form 1078, for each taxable year. The ruling contained in the article quoted herein will govern, namely, that when Form 1078 is filed, the employer may continue to rely thereon until the alien ceases to be a resident under the provisions of Article 314.

3494 You are further advised that employers with whom Forms 1078 are
3397 filed, should make a record of the certificates and forward them to the Commissioner of Internal Revenue, Sorting Division, Washington, D. C., not later than the twentieth day of the month succeeding that during which the certificates were received. (Letter to W. B. Reed, Accounting Secretary, National Coal Association, Washington, D. C., signed by Commissioner Daniel C. Roper, and dated July 9, 1919.)

(T. D. 2892)

3495 **Amending Article 307, final edition of Regulations 45, dealing with**
2972a **non-resident alien individual entitled to personal exemption and credit for dependents.**—The final edition of regulations 45 is amended by changing article 307 to read as follows:

Art. 307. When nonresident alien individual entitled to personal exemption.—(a) The following is an incomplete list of countries which either impose no income tax or in imposing an income tax allow both a personal exemption and a credit for dependents which satisfy the similar credit requirement of the statute: Argentina; Bosnia; Brazil; Canada; Carinthia; China; Chile; Cuba; Ecuador; Dalmatia; Denmark; France; Herzegovina; Istria; Mexico; Montenegro; Morocco; Nicaragua; Persia; Portugal; Roumania; Russia; Santo Domingo; Serbia; Union of South Africa. (b) The following is an incomplete list of countries which in imposing an income tax allow a personal exemption which satisfies the similar credit requirement of the statute, but do not allow a credit for dependents: Bachka; Banat of Tenesvar; Croatia; El Salvadore; Holland; Italy; Slavonia. (c) The following is an incomplete list of countries which in imposing an income tax do not allow to citizens of the United States not residing in such country either a personal exemption or a credit for dependents and, therefore, fail entirely to satisfy the similar credit requirement of the statute: Australia; Costa Rica; Great Britain and Ireland; Japan; New Zealand; Norway; Spain. The former names of certain of these territories are here used for convenience, in spite of an actual or possible change in name or sovereignty. A nonresident alien individual who is a citizen or subject of any country in the first list is entitled for the purpose of the normal tax to such credit for a personal exemption and for dependents as his family status may warrant. If he is a citizen or subject of any country in the second list he is entitled to a credit for a personal exemption, but to none for dependents. If he is a citizen or subject of any country in the third list he is not entitled to credit for either a personal exemption or for dependents. If he is a citizen or subject of a country which is in none of the lists, then to secure credit for either a personal exemption or for dependents he must prove to the satisfaction of the Commissioner that his country does not impose an income tax or that in imposing an income tax it grants the similar credit required by the statute. (T. D. 2892, signed by Commissioner Daniel C. Roper, and dated July 17, 1919.)

3496 **Coupons of foreign-owned domestic bonds purchased by a domestic**
687 **corporation.**—In case bank purchases abroad coupons from bonds issued by domestic corporations purchaser held prima facie to be recipient of income. Ownership certificates should therefore be secured from original owners of bonds in order that tax may be withheld as provided in sections two twenty one and two thirty seven revenue act 1918. (Telegram M. F. Frey, Guaranty Trust Company, New York, N. Y., signed by Commissioner Daniel C. Roper, and dated July 22, 1919.)

(*Decision.*)
(Act of Oct. 3, 1913.)
257 Fed. 133.

Stock losses as losses incurred in trade.

BRYCE et al. v. KEITH, Collector of Internal Revenue.
(District Court, E. D. New York. March 26, 1919.)

3497 In Equity. Suit by Peter Cooper Bryce and another, as executors
1066 of the will of Edith C. Bryce, deceased, against Henry P. Keith, Collector of Internal Revenue for the First District of New York. On plaintiff's motion for judgment on demurrer to complaint interposed by defendant. Demurrer overruled, with leave to answer.

3498 GARVIN, District Judge. Plaintiff's move for judgment upon the demurrer to the complaint interposed by the defendant. The complaint sets forth the following facts: That plaintiffs are the surviving executors of Edith C. Bryce, deceased, who died April 29, 1916. That on various dates between October 6, 1908, and February 4, 1910, inclusive, she had traded certain glue and gelatine, glue and gelatine stock, and machinery worth $225,000 for 2,250 shares, of the par value of $100 each, of the capital stock of Peter Cooper's Glue Factory, a corporation, and had sold to said corporation other similar materials worth and at an agreed value of $471,594.72. That she had eventually accepted in payment of the agreed purchase price therefor, and of other indebtedness of the corporation to her for rent, interest, and insurance premiums, amounting to $28,405.28, 5,000 other shares of said stock making 7,250 shares thereof altogether, which 7,250 shares were all so acquired by her on and prior to February 4, 1910, at a total cost to her of $725,000 as aforesaid. That on or about June 10, 1914, all of the assets of said Peter Cooper's Glue Factory were sold for a sum insufficient to pay its debts, and said stock thereupon became entirely worthless, and the said sum of $725,000 was thereupon and during the year 1914 actually charged off as a loss on the books of said Edith C. Bryce. That prior to March 1, 1915, and on or about February 27, 1915, under and pursuant to the provisions of the statute known as the "Federal Income Tax Law," to wit, section 2 of the Act of Congress, approved October 3, 1913, c. 16, 38 Stat. 114, entitled "An act to reduce tariff duties and to provide revenue for the government and for other purposes," she duly made to and filed with the defendant as collector of internal revenue of the United States of America for the First district of New York a return of her gross income during the year 1914 and of certain items claimed by her to be properly deductible therefrom in order to determine her net income for that year subject to the tax imposed by said statute. The said return stated her gross income to be, as in fact it was, $428,071.67, and claimed as an item properly deductible, the said sum of $725,000, as a loss actually sustained by her during 1914, incurred in trade and not compensated for by insurance or otherwise. That thereafter the Commissioner of Internal Revenue assessed a tax against her in the sum of $12,336.44, which amount was fixed without allowing any deduction whatever for the said sum of $725,000. That the plaintiffs paid this tax involuntarily, under protest, under duress, under threat of distraint against their property, and after the defenant, as collector as aforesaid, had demanded the same.

3499 From the complaint it cannot be determined what proportion of the loss sustained by the decedent occurred between March 1, 1913, and June 10, 1914 (that being a matter of proof), and as the only question raised by the demurrer is whether the plaintiffs are entitled to any relief whatever, it is proper to consider at once whether any part of such a loss as the decedent sustained may be deducted.

3500 The return was made for the year 1914 under the act of Congress approved October 3, 1913, paragraph "b" of section 2 of which provides:

"That in computing net income for the purpose of the normal tax there shall be allowed as deductions: * * *

"Fourth, losses actually sustained during the year, incurred in trade or arising from fire, storms, or shipwreck, and not compensated for by insurance or otherwise."

3501 The defendant claims that no part of the stock loss was a loss "incurred in trade," within the meaning of the act.

3502 The transactions by which the decedent became the owner of the stock were carried on over a considerable period, were complicated in character, involved a very large sum of money, and must have required much of her time and attention, and I am of the opinion that they were of the character contemplated by Congress as "incurred in trade."

3503 The wording of Treasury Decisions, T. D. 1989 [¶1067], dated June 2, 1914, bears out this view:

"Losses actually sustained during the year incurred in trade are limited by the language of the act itself. In trade is synonymous with business; business has been defined as that which occupies and engages the time, attention and labor of any one for the purposes of livelihood, profit, or improvement; that which is his personal concern or interest; employment, regular occupation, but it is not necessary that it should be his sole occupation or employment. The doing of a single act incidental or of necessity not pertaining to the particular business of the person doing the same will not be considered engaging in or carrying on the business. It is therefore held that no losses are deductible in a return of income save and only those losses permitted and provided for by the statute, viz., those actually sustained during the year, which are incurred in trade."

3504 In overruling the demurrer, the question of the amount of, or method of arriving at, the proper deduction, is not decided.

3505 Demurrer overruled, with leave to answer in 20 days from the service of the order to be entered herein. (257 Fed. 133.)

3506 **In determining value of stock as of March 1, 1913, the goodwill of the**
2846 **corporation is to be taken into consideration.**—Receipt is acknowledged of your letter of July 2, 1919, in which you refer to the consideration to be given to the value of goodwill of a corporation where it is desired to establish the fair market value of its outstanding capital stock on March 1, 1913.

In reply, you are advised that the value of the tangible and intangible assets of a corporation, inclusive of the value of goodwill, as of March 1, 1913, is to be taken into consideration, together with such other facts as may be necessary, where it is desired to establish the market value of its outstanding capital stock on March 1, 1913, for income tax purposes. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated July 22, 1919.)

3507 **Withholding and tax liability in connection with credit and debit**
572 **interest items involved in transactions between domestic and foreign**
2312 **banks.**—Reference is made to your letter dated June 30, 1919 re-
3342 lative to withholding of the tax at the source from interest on bank balances of foreign banks on deposit in domestic banks, under the provisions of the Revenue Act of 1918. In many cases the accounts of foreign banks are at times overdrawn and instead of crediting interest to their accounts the domestic bank is obliged to debit interest for the money temporarily advanced to the foreign bank. In some cases foreign banks have two accounts with domestic banks, one a deposit account and the other a borrowing account. You ask whether in such cases the domestic bank should deduct the tax from the entire amount of interest credited to the foreign bank or whether the domestic bank is required to deduct the tax from only the net amount of interest credited to the foreign bank after subtracting the amount of interest debited or only from the excess of the amount of interest credited to the deposit account of the foreign bank over the amount of interest charged upon the borrowing account. In this connection you are advised that under the provisions of Sections 221 and 237 of the Act, domestic banks are required to deduct and withhold the tax from the entire amount of interest credited to foreign banks upon their deposits in the domestic banks regardless of the amount of interest charged the foreign banks on money advanced to them through loans or borrowing accounts or on account of overdrafts or otherwise. However if the foreign banks render returns of their total income from all sources within the United States they may deduct in such returns the interest charged upon the money advanced to them by the domestic banks to the extent provided in Sections 214 (a,2) and 234 (a,2) of the Act. In such cases the foreign bank should include in its gross income the entire amount of the income from which the tax was withheld and paid at the source as well as income from all other sources within the United States without deduction for the tax so paid, but any tax actually so withheld is to be credited against the total tax as computed in its return. In the event the amount of tax so paid at the source by the withholding agent is in excess of the total tax liability of the foreign bank, a claim for refund may be properly filed for the amount overpaid. (Letter to The Corporation Trust Company, signed by Commisioner Daniel C. Roper, and dated July 26, 1919.)

(T. D. 2903.)

3508 **In re laws relating to the giving out, by employees of the Bureau of**
403 **Internal Revenue, of information contained in returns filed by tax-**
3063 **payers or in reference to office procedure with respect to the auditing of returns, handling of claims and similar lines of work.**—Your attention is directed to the following legislation relating to the divulging of information contained in the returns of taxpayers.

3509 Section 257 of the Revenue Act of 1918 provides: [¶403]. Section
403 3167 R. S., as amended by Section 1317 of the said Revenue Act of
441 1918, provides: [¶441]. Section 3152, R. S., as amended by Act of
443 March 1, 1879, authorizing the employment of internal revenue agents also provides: "And all provisions of section thirty-one hundred and sixty-seven, * * * of the Revised Statutes shall apply to internal-revenue agents as fully as internal-revenue officers." Section 3173 (*R. S., as amended by said Section* 1317) of the Revenue Act of 1918 provides that: "It shall be the duty of any person, partnership, firm or association or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, (1) in case of a special tax, on or before

the thirty-first day of July in each year, and (2) in other cases before the day on which the taxes accrue to make a list or return * * *: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return. * * *" Section 3176, R. S., as amended by said Section 1317, Revenue Act of 1918, further provides: [¶443].

3510 Reading these provisions of law together, it is evident that any collector, deputy collector, agent, clerk, or other officer or employee of the Bureau of Internal Revenue, including internal-revenue agents, who divulges or makes known in any manner whatsoever not provided by law the amount or source of income, profits, losses, expenditures, or any particulars thereof set forth or disclosed in any income return made by any taxpayer, or by a collector or deputy collector, or by the Commissioner of Internal Revenue, or who permits any income return or copy thereof, or any book containing any abstract or particulars thereof, to be seen or examined by any person, except as provided by law, or who prints or publishes in any manner whatever, not provided by law, any income return or any part thereof, or source of income, profits, losses, or expenditures appearing in any income return, is guilty of a misdemeanor and subject to a fine not exceeding $1,000 or to imprisonment not exceeding one year, or both, at the discretion of the court, and if he be an officer or employee of the United States, to be dismissed from office or discharged from employment.

3511 The only provisions of law authorizing the making known of any income return under the Revenue Act of 1918 are those contained in Section 257 of said Act, above quoted.

3512 Similar provisions to those contained in Section 257, Revenue Act of 1918, and Sections 3173 and 3176, as amended by said Revenue Act of 1918, were also contained in the Act of October 3, 1914, and the Act of September 8, 1916.

3513 You should endeavor in every way possible to impress employees under your supervision with the seriousness of the offenses which are intended to be prevented by this legislation. Any violations of these provisions of the law which become known to any officer or employee of the Bureau must be immediately reported for investigation. (T. D. 2903, signed by Commissioner Daniel C. Roper, and dated July 30, 1919.)

(T. D. 2899.)

3514 **Income Tax—Decision of Court. [Life Insurance—Dividends.]**—The appended decision of the United States Circuit Court of Appeals for the Third Circuit in the case of Lederer, collector, *v.* Penn Mutual Life Insurance Co., is published for the information of internal-revenue officers and other concerned. [Captions only.]

3515 **1. Dividends Excluded from Gross Income.**—Under the provisions of paragraph G, subdivision (b) of section 2 of the act of October 3, 1913, that "life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder within such year," a life insurance company is not entitled to exclude from its total income during the taxable year, for the purpose of ascertaining its gross income, any dividends paid or credited to policyholders from whom it did not receive any premium during that year; and as to such policyholders as it did receive premiums from that year it is entitled to exclude only such part of the dividends paid to those policyholders as did not exceed the amount received from them, respectively, by way of premiums during that year.

3516 **2. Dividends Consisting of Redundancies in Previous Premium Payments.**—None of the cash dividends paid by a life insurance company to its policyholders which represent redundancies in previous premium payments are deductible from gross income in annual tax returns as "sums other than dividends paid within the year on policy * * * contracts." (T. D. 2899, signed by Commissioner Daniel C. Roper, and dated July 24, 1919.)

(T. D. 2906.)

3517 2972a 3274 3495 **Income Tax.—Amending Article 307, final edition of Regulations 45, dealing with nonresident alien individual entitled to personal exemption and credit for dependents.**—The final edition of Regulations 45 is amended by changing Article 307 to read as follows:

Art. 307. When nonresident alien individual entitled to personal exemption—(a) The following is an incomplete list of countries which either impose no income tax or in imposing an income tax allow both a personal exemption and a credit for dependents which satisfy the similar credit requirement of the statute: Argentina; Belgium; Bolivia; Bosnia; Brazil; Canada; Carinthia; China; Chile; Cuba; Dalmatia; Denmark; Equador; Egypt; France; Herzegovina; Istria; Mexico; Montenegro; Morocco; Newfoundland; Nicaragua; Norway; Panama; Persia; Peru; Portugal; Roumania; Russia (including Poles owing allegiance to Russia); Santo Domingo; Serbia; Siam; Spain; Union of South Africa; Venezuela. (b) The following is an incomplete list of countries which in imposing an income tax allow a personal exemption which satisfies the similar credit requirement of the statute, but do not allow a credit for dependents: Bachka; Banat of Temesvar; Croatia; El Salvadore; India; Italy; Slavonia. (c) The following is an incomplete list of countries which in imposing an income tax do not allow to citizens of the United States not residing in such country either a personal exemption or a credit for dependents and, therefore, fail entirely to satisfy the similar credit requirement of the statute: Australia; Costa Rica; Great Britain and Ireland; Japan; The Netherlands; New Zealand. The former names of certain of these territories are here used for convenience, in spite of an actual or possible change in name or sovereignty. A nonresinent alien individual who is a citizen or subject of any country in the first list is entitled for the purpose of the normal tax to such credit for a personal exemption and for dependents as his family status may warrant. If he is a citizen or subject of any country in the second list he is entitled to a credit for a personal exemption, but to none for dependents.

If he is a citizen or subject of any country in the third list he is not entitled to credit for either a personal exemption or for dependents. If he is a citizen or subject of a country which is in none of the lists, then to secure credit for either a personal exemption or for dependents he must prove to the satisfaction of the Commissioner that his country does not impose an income tax or that in imposing an income tax it grants the similar credit required by the statute. (T. D. 2906, signed by Commissioner Daniel C. Roper, and dated August 5, 1919.)

(T. D. 2907.)

3518 **Instructions relative to acceptance of Treasury certificates of**
435 **indebtedness for income and profits taxes, supplementing Articles**
3128 **1731 and 1732, Regulations 45.**—Collectors of Internal Revenue
3371 are directed to receive at par United States Treasury certificates of indebtedness of Series T4, dated June 3, 1919, maturing Sepember 15, 1919, and Series T6, dated July 1, 1919, maturing September 15, 1919, in payment of income and profits taxes payable on September 15, 1919, and to receive at par United States Treasury certificates of indebtedness of Series T5, dated June 3, 1919, maturing December 15, 1919, and Series T7, dated July 1, 1919, maturing December 15, 1919, in payment of income and profits taxes payable on December 15, 1919. Collectors are authorized to receive such certificates in payment of such taxes, respectively, prior to the dates when the certificates respectively mature. The certificates of said series have one interest coupon attached, payable at the maturity of the certificates, respectively, but such coupons must in all cases be detached by the taxpayer and collected in ordinary course when due. The amount, at par, of the Treasury certificates of indebtedness presented by any taxpayer in payment of income and profits taxes must not exceed the amount of the taxes to be paid by him, and collectors shall in no case pay interest on the certificates nor accept them for an amount other or greater than their face value.

3519 Deposits of Treasury certificates of indebtedness received in payment of income and profits taxes must be made by collectors with the Federal Reserve Banks of the districts in which the respective collectors' offices are located, unless otherwise specifically instructed by the Secretary of the Treasury. Specific instructions may be given in certain instances for the deposit of the certificates with Federal Reserve Banks of other districts and with branch Federal Reserve Banks, and the term "Federal Reserve Bank," where it appears herein, includes such branches. Treasury certificates accepted by the collector prior to the dates when the certificates respectively mature, should be forwarded by the collector to the Federal Reserve Bank to be held for account of the collector until the date of maturity, and for deposit on such date. Certificates of indebtedness should in all cases be stamped as follows by the Collector, and when so stamped forwarded to the Federal Reserve Bank by registered mail uninsured:

"....., 191....

"This certificate has been accepted in payment of income and profits taxes and will not be redeemed by the United States except for credit of the undersigned.

.....

Collector of Internal Revenue

for the ..... district of ....."

3520 Collectors of internal revenue are not authorized, unless otherwise notified by the Secretary of the Treasury, to receive in payment of income or profits taxes interim receipts issued by Federal Reserve Banks in lieu of definite certificates of the series herein described.

3521 Collectors should make in tabular form a schedule in duplicate of the certificates of indebtedness to be forwarded to the Federal Reserve Bank, showing the serial number of each certificate, the date of issue and maturity, and face value. Certificates of indebtedness accepted prior to the date of maturity must be scheduled separately. At the bottom of each schedule there should be written or stamped "Income and Profits Taxes $.....," which amount must agree with the total shown on the schedule. One copy of this schedule must accompany certificates sent to the Federal Reserve Bank, and the other be retained by the collector. Such income and profits tax deposits must in all cases be shown on the face of the certificate of deposit (National Bank Form 15) separate and distinct from the item of miscellaneous internal revenue collections (formerly called Ordinary), but it is not necessary to give the separation into corporation income, individual income and profits taxes.

3522 Until certificates of deposit are received from the Federal Reserve Banks, the amounts represented by the certificates of indebtedness forwarded must be carried by collectors as cash on hand, and not credited as collections, as the dates of certificates of deposit determine the dates of collections.

3523 For the purpose of saving taxpayers the expense of transmitting such certificates as are held in Federal Reserve cities to the office of the collector in whose district the taxes are payable, taxpayers desiring to pay income and profits taxes by Treasury certificates of indebtedness acceptable in payment of such taxes, should communicate with the collector of the district in which the taxes are payable and request from him authority to deposit such certificates with the Federal Reserve Bank in the city in which the certificates are held. Collectors are authorized to permit deposits of Treasury certificates of indebtedness in any Federal Reserve Bank with the distinct understanding that the Federal Reserve Bank is to issue a certificate of deposit in the collector's name covering the amount of the certificates of indebtedness at par and to state on the face of the certificate of deposit that the amount represented thereby is in payment of income and profits taxes. The Federal Reserve Bank should forward the original certificate of deposit to the Treasurer of the United States, with its daily transcript, and transmit to the collector the duplicate and triplicate, accompanied by a statement giving the name of the taxpayer for whom the payment is made in order that the collector may make the necessary record and forward the duplicate to the office of the Commissioner of Internal Revenue.

3524 This Treasury Decision amends and supplements the provisions of Articles 1731 [¶3128] and 1732 [¶3129] of Regulations 45. (T. D. 2907. Signed by Commissioner Daniel C. Roper, and dated August 7, 1919.)

3525 **Alien employees—Resident and Non-resident—Withholding upon**
2976 **change of status.**—Reference is made to your letter dated June 30,
3406 1919, which is quoted here in part: "Referring to our telephone
3436 conversation of this morning, we understand that in the case of the
3492 employment of alien labor that where such labor has been employed for three months or more continuously his status is established as a resident alien, and there is no liability upon the employer for further withholding from such an employee. In fact, he may refund the amounts withheld prior to that time. Assuming that such an employee has been in the service of an employer continuously for a sufficient time to establish his status as a resident alien until for example November 15th. The employer has paid over to him all of the money which is due him up to that time. The employee announces his intention to return to the foreign country from which he came, but continues to work for the employer until

the first of January. The employer now has information as to the intentions of such an employee. We understand that there is no liability upon him for withholding prior to the time in which these intentions became known; namely, November 15th, and that he should withhold only upon the basis of the earnings of the employee from the time from which the employer knew of the intention of the employee to quit the country."

3526 In reply you are advised that under the provisions of Article 315, Regulations 45, if wages are paid without withholding the tax, the employer should be provided with written proof of facts which overcome the presumption that such alien is a nonresident. If an alien has been living in the United States for as much as one year immediately prior to the time he entered the employment of the withholding agent, or if he has been regularly employed by a resident individual or corporation in the same county for as much as three months immediately prior to any payment by the employer, he may be treated as a resident in the absence of facts known to the employer showing that he is in fact a transient.

3527 In case tax has been withheld by the employer from wages paid during three months period while the status was that of a nonresident alien, the amount of tax may be refunded in accordance with the data contained on Form 1115. This form is provided for the purpose of receiving the benefit of personal exemption and credit for dependents in connection with income tax withheld at the source from salaries, wages and similar income. In case tax has been withheld from an alien employee and his status as a resident has been established by the execution of Form 1078, any income tax withheld may be refunded upon receipt of that certificate. The fact, however, that an alien has been employed by a corporation for three months is not in itself sufficient grounds upon which to refund income tax withheld at the source. It was not the intention that Article 315 of Regulations No. 45 referred to herein, should be construed as permitting an employer to withhold from nonresident alien employees for a period of only three months and refund the amount of tax withheld at the end of that period merely because aliens had been employed by him for that period of time.

3528 If the status of a resident employee changes to that of a nonresident alien, the employer should withhold income tax at the rate of eight per cent from all wages paid to the nonresident employee on and after the date on which the employer had knowledge of the change. Although the employee, in such case, will be taxable as a nonresident alien for the entire taxable year during which his status is changed from that of a resident to that of a nonresident alien, the employer will not be held liable for the deduction of income tax with respect to wages paid preceding the knowledge of the employer as to the change in status. (Letter to W. B. Reed, Accounting Secretary, National Coal Association, Washington, D. C., signed by Commissioner Daniel C. Roper, and dated August 6, 1919.)

3529 Compromise of penalties arising under income tax laws.—Department of Justice, June 3, 1919. Sir: I have had under careful consideration for some time a request from your predecessor for an opinion as to the power of the Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, to compromise claims for certain penalties arising under the income-tax laws. The specific claims mentioned are:

(1) Claims for amounts 50 per cent in addition to amounts of income and excess-profit taxes assessed under authority of section 3176 of Revised Statutes, as amended by section 16 of the act of September 8, 1916, and of section 212 of the act of October 3, 1917, in cases of failure to make and file returns or lists within the time prescribed by law or by the collector;

(2) Claims for amounts 100 per cent in addition to amounts of income and excess-profit taxes assessed under authority of said sections in cases of false or fraudulent returns or lists wilfully made; and

(3) Claims for sums of 5 per cent on amounts of income and excess-profit taxes not paid when due and interest at the rate of 1 per cent per month on said taxes, the collection of which is authorized by sections 9 (*a*) and 14 (*a*) of the act of September 8, 1916, and section 212 of the act of October 3, 1917.

3530 The exact question submitted is whether, under the authority of section 3229 of Revised Statutes, the Commissioner of Internal Revenue is authorized to compromise these penalties in cases in which there is no doubt as to the legal liability of the taxpayer or as to the collectibility of the claim, but in which, in the opinion of the Secretary of the Treasury and that of the commissioner, considerations of justice, equity, and public policy warrant a reduction of the amounts to be collected on the ground that the statutory amounts are in the nature of penalties for delinquencies, and that, though such amounts are technically due and are collectible, the collection of them inflicts punishment which is unduly severe in view of the culpability.

3531 Section 3229 of the Revised Statutes is as follows:

"The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise."

3532 It will be observed that the power to compromise is given in very broad and general terms. Congress has not seen fit to specify the considerations which shall control the commissioner in determining whether a case ought or ought not to be compromised instead of commencing suit, nor to place any limitation upon this exercise of power, except that his action shall be with the advice and consent of the Secretary of the Treasury. After suit is commenced the power is to be exercised only with the advice and consent of the Secretary of the Treasury and the recommendation of the Attorney General.

3533 The act of Congress which, somewhat condensed and shortened, was carried into the Revised Statutes as section 3229 was section 102 of the act of June 20, 1868 (15 Stat. 125, 166). That act conferred the power to compromise in all cases arising under the internal-revenue laws where, instead of commencing or proceeding with a suit, "it may appear to the Commissioner of Internal Revenue to be for the interest of the United States to compromise the same." The language just quoted was omitted from section 3229. It will be seen, therefore, that the original act authorized a compromise whenever, in the opinion of the Commissioner of Internal Revenue it was "for the interest of the United States." These words were by way of limitation upon his power. Their omission from section 3229, therefore, can not be said to render the power more restricted than it was under the original act. Certainly, then, section 3229 can not be given a narrower meaning than to say that the power is conferred to make any compromise which in the opinion of the commissioner, acting with the advice and consent of the Secretary of the Treasury, and, in the event suit has been commenced, upon the recommendation of the Attorney General, will be for the interest

of the United States. The fact that the act applies to both civil and criminal cases, and the further fact that when a compromise is made there shall be placed on file the opinion of the Solicitor of Internal Revenue stating the reasons for the compromise, the amount of tax assessed, the amount of additional tax or penalty imposed, and the amount actually paid, make it plain that whatever power to compromise is given extends to penalties, such as those mentioned in the request for this opinion.

3534 Opinions of my predecessors touching the nature and extent of the power of the commissioner to make compromises are more or less conflicting and it will not, I think, serve any useful purpose to review and attempt to reconcile them. I have given them, as well as all decisions of the courts bearing in any way on the question, careful consideration and will content myself with stating my conclusions.

3535 Your request does not relate to compromises of taxes, but only to penalties and interest imposed on account of delinquencies of the taxpayer. I shall accordingly confine my opinion to penalties and interest.

3536 It seems clear that Congress has left it to the judgment and discretion of the commissioner to determine when it is to the interest of the United States to compromise such claims instead of commencing or prosecuting suits therefor, and that the only limitation placed upon the exercise of this judgment and discretion is that his action shall be with the advice and consent of the cabinet officers mentioned in the statute. And I am of the opinion that, subject to this limitation, he has the power to compromise the penalties and interest mentioned in the request for this opinion whenever, in his judgment, such compromises are for the interest of the United States. Congress has not said that such compromises may be made only when in the judgment of the commissioner more money can thereby be realized than can be realized by commencing and prosecuting a suit. It can not be said, therefore, as a matter of law, that the power to compromise is limited to cases in which either the liability for the penalty or the collectibility of the claim is doubtful. In these matters I think the judgment of the commissioner as to what is for the interest of the United States is made conclusive. What considerations shall control are fixed by no rule of law, but depend upon his own discretion and sound judgment exercised in good faith. It may be that with respect to the amount of tax to be collected, or the amount of penalty resulting from wilful fraud, the commissioner may never find a case in which he will feel justified in accepting less than can be legally collected, whereas in cases of penalties resulting from accident, negligence, or technical omission, he may honestly believe that the interests of the United States will be best served by accepting less than the full penalty. In such cases, I am of opinion that he has the right to compromise upon any ground which, in his judgment, renders the compromise for the interest of the United States. Respectfully,

To the Secretary of the Treasury. A. Mitchell Palmer.

3537 **Inventory losses—time for filing claim in abatement.**—Acknowledg-
144 ment is made of the receipt of your telegram of July 25, 1919,
2963e asking to be advised if an abatement claim covering loss in inventory
3337 value can be filed by a taxpayer after his return is filed but before
3368 the total amount of tax is collected. In reply, you are advised that as the section of the law covering the matter referred to by you reads that at the time of filing a return for the taxable year 1918, a taxpayer *may* file a claim for abatement, it is held by this Bureau that the law does not mandatorily provide that the claim shall be filed at the time of rendering the return. Therefore, such an abatement claim will be considered by this Bureau if filed before, or within ten days after, the mailing of the Collector's notice and demand on Form 17. (Letter to Guaranty Trust Company of New York, signed by Commissioner Daniel C. Roper, and dated August 6, 1919.)

3538 **Policy of the Bureau of Internal Revenue with Regard to Requests for Rulings and Advice Upon Abstract Propositions.**—The Bureau of Internal Revenue, in a statement issued yesterday [*August* 25, 1919] definitely outlines its policy with regard to requests which are received daily for rulings and advice upon abstract propositions involving questions of income tax and profit liability. For example, taxpayers considering the reorganization of corporations frequently ask whether the contemplated plans will result in the realization of taxable income. These requests for advance information have become so numerous, that the Bureau deems it advisable to state why it is found necessary to decline to make advance rulings in particular cases. The policy of the Bureau, it is announced, will be not to answer such inquiries except under the following circumstances:

The transaction must be completed and not merely proposed or planned.

The complete facts relating to the transaction, together with abstracts from contracts or other documents necessary to present the complete facts must be given.

The names of all the real parties interested (not "dummies" used in the transaction) must be stated regardless of who presents the question, whether attorney, accountant, tax service or other representative.

3539 The conclusions upon which the rulings are based are as follows:

"An examination of the revenue laws setting forth the duties of the Commissioner of Internal Revenue does not disclose any function assigned to him by statute which authorizes him to make a decision in any particular case which does not arise in actual course of administering the law. He is authorized, with the approval of the Secretary of the Treasury, to make regulations, but this would not authorize him even, with the approval of the Secretary, to decide any particular case in advance of its actual presentation of the facts for a decision.

3540 "In the interval between an informal advance decision and the time when the case is finally presented for actual decision, developments may occur which affect the decision. When a question is actually presented in the regular course of administration for the decision of the Commissioner, the decision must then be in accordance with such light, whether from experience or from judicial decision, as he may then have. Any taxpayer who had relied on an advance decision would necessarily be prejudiced whenever the final decision did not agree with the advance decision. The fact that taxpayers asking for advance decisions are usually unwilling to accept an oral opinion shows that taxpayers are intending to rely on such advance decisions, and are likely to be misled by them if change later becomes necessary.

3541 "It is also a matter of practical experience that when facts are presented for advance decision it is practically impossible to present the same facts as will afterwards come up in the regular course for actual decision. Reorganization plans, for instance, when they actually work out, may be changed in some particular which the taxpayer regards as unimportant, but which in fact may be decisive of the case.

3542 "The large number of taxpayers which must be dealt with under the present law and the great variety of intricate questions involved requires employes not only of native ability but of special training. Even such a force is taxed to the utmost in dealing with the actual cases as they arise, and every attempt to render an advance decision takes just so much time away from the taxpayers who have a definite right under the law to a consideration of their cases which are ready for final disposal.

3543 "Experience in the past shows that when such questions were considered a single advance decision was not sufficient in most cases.

3544 "It is realized that the uncertainty which exists in the minds of business men as to the construction of various parts of the law is

unfortunate and tends to hamper business development, but since such uncertainty can be resolved only through decisions of the courts, and since an advance decision by the Commissioner is not a real but only an apparent resolution of the uncertainty, it appears that in giving such advance decisions the Commissioner would be doing the taxpayer an injustice rather than a favor.

3545 "Where a question presented is not covered by the regulations and is so general that the regulations should contain a provision bearing on it, an amendment of the regulations will be prepared as heretofore.

3546 "The conclusions here stated are the same conclusions that have been reached in practically every instance by bodies whose duty it is to make decisions based on facts—that it is unsafe and misleading to treat hypothetical questions or to give advance information even on real questions." (Statement by the Bureau of Internal Revenue, dated August 26, 1919.)

3547 **Bond Interest Due Prior to March 1, 1913—No Withholding.**—
613 Coupons which became due June 1, 1910 presented on behalf of
2862d non-resident alien individual owner. Should the Federal Income
3431 Tax be withheld therefrom? Please wire reply. (Answer.) Bond interest represents Income to taxpayer when due and payable in accordance with Article Fifty-Four [¶2862d] Regulations Forty-Five. No tax required to be withheld from interest upon bonds due prior to March first Nineteen Thirteen but paid subsequent to that date. (Telegram from Chicago & Northwestern Railway Company and the answer thereto, signed by Acting Commissioner Callan and dated August 26, 1919.)

(T. D. 2916)

3548 **Providing for the addition of two new articles, Regulations 45, in**
2209 **regard to the determination of the fair market value and quantity of**
2955 **timber.**—The final edition of Regulations No. 45 is amended by the insertion of two new articles to be known as Article 234 and Article 235 as follows:—**Article 234. Determination of Fair Market Value of Timber.**—Where the fair market value of the property at a specified date in lieu of the cost thereof is the basis for depletion and depreciation deductions such value must be determined, subject to approval or revision by the Commissioner, by the owner of the property in the light of the most reliable and accurate information with reference to the condition of the property as it existed at that date, regardless of all subsequent changes such as changes in surrounding circumstances, in methods of exploitation, in degree of utilization, etc. The value sought should be that established assuming a transfer between a willing seller and a willing buyer as of that particular date. No rule or method of determining the fair market value of timber property is prescribed, but the Commissioner will give due weight and consideration to any and all facts and evidence having a bearing on the market value, such as cost, actual sales and transfers of similar properties, market value of stock or shares, royalties and rentals, value fixed by the owner for purposes of the capital stock tax, valuation for local or State taxation, partnership accountings, records of litigation in which the value of the property was in question, the amount at which the property may have been inventoried in probate court, disinterested appraisals by approved methods, and other factors. For depletion purposes the cost of the timber or its fair market value at a specified date shall not include any part of the cost or value of the land.

3549 **Art. 235. Determination of Quantity of Timber.**—Each taxpayer claiming a deduction for depletion is required to estimate with respect to each separate timber account the total units (feet board measure,

cords, or other units) of timber reasonably known or on good evidence believed to have existed on the ground on March 1, 1913, or on the date of acquisition of the property, as the case may be. The taxpayer, according to his best knowledge and belief and in the light of the most accurate and reliable information, will estimate the number of units of timber actually present upon the specified date; this estimate will state the number of units which would have been found present by a careful estimate made on the specified date with the object of determining 100 per cent of the quantity of timber which the area would have produced on that date if all of the merchantable timber had been cut and utilized in accordance with the standards of utilization prevailing in that region at that time. If subsequently during the ownership of the taxpayer making the return additional units of timber are found to be available for utilization as the result of the growth of the timber, of closer utilization of the timber, of the utilization of species of trees not formerly utilized, of underestimates of the quantity of timber available on the specified date, etc., which were not taken into account in estimating the number of units for purposes of depletion, or if it shall be found in the course of operation that timber included in the estimate is not merchantable as the result of deterioration through rot or otherwise, or that the original estimate was too great, a new estimate of the recoverable units of timber (but not of the cost or the fair market value at a specified date) shall be made and when made shall thereafter constitute a basis for depletion. In In the selection of the unit or units of estimate the custom applicable to the given type of timber in the given region should be considered. (T. D. 2916, signed by Commissioner Daniel C. Roper, and dated September 5, 1919.)

3550 1102 2962 **No taxable profit accrues to the donor in connection with the making of a deductible charitable contribution in the form of securities which have increased in value in his hands.**—In compliance with your request of July 31, 1919, this office hereby confirms the following telegram addressed to you under date of July 19, 1919: "Your telegram July 17. Where donor is entitled to claim deduction for value of gift as provided in Article 251 regulations he is not required to report as a profit the excess in value of the property donated over its cost or fair market value on March 1, 1913."

The above was in reply to your telegraphic inquiry of July 17, which reads as follows:

"Article 251 says where charitable gift is other than money basis for calculation of amount to be deducted shall be fair market value of thing given, Does this mean donor can deduct market value of gift of securities without being treated as having realized as taxable income the difference between such market value and cost of securities to him? Please wire reply our expense." (Letter to Ropes, Gray, Boyden and Perkins, Boston, Mass., signed by J. H. Callan, Assistant to the Commissioner, by N. T. Johnson, Chief of Section, and dated Aug. 14, 1919.)

3551 2862d 2996 3431 **Tax liability and withholding obligation on bond interest collected and paid in year subsequent to that in which the interest became due and payable.**—Reference is made to your letter of June 26, 1919, in which you request a ruling in regard to the rate of withholding which attaches to interest coupons maturing in one year and presented for payment in a subsequent year when withholding is required at a different specified rate. You state that owing to the German occupation of Belgium during the war and to the general unsettled conditions in different parts of Europe, it has been impossible for foreign owners of American securities to deposit coupons for collection when they became due during the years 1915, 1916, 1917 and 1918, and that in the year 1919, when they were pre-

sented for payment, a tax at the rate of 8% was withheld on them. You raise the question as to whether withholding in such cases should have been at the rate specified for the year in which the coupons were presented for payment, or whether it should have been at the rates specified for the years in which the coupons matured.

3552 In reply you are advised that Article 54 of Regulations 45 [¶2862d] states specifically that where interest coupons have matured, but have not been cashed, such interest payment, though not collected when due and payable, is nevertheless available to the taxpayer and should therefore be included in his gross income for the year during which the coupons matured. Hence, withholding on interest coupons which matured during the years 1915, 1916, 1917 and 1918 should have been at the rates specified for the years in which such coupons matured, the year in which the coupons were presented for payment having no bearing upon the determination of the rate at which they were subject to withholding.

3553 You are advised further that the owners of the bonds to which you refer may exercise their privilege of filing with the Collector on Form 46 a claim for refund of that portion of the tax withheld which was in excess of their true liability. (Letter to Morris F. Frey, Guaranty Trust Company, New York, N. Y., signed by J. H. Callan, Assistant to the Commissioner, and dated September 4, 1919.)

3554 1089 2105 2912 **Allowance for obsolescence of good-will, trade marks, and trade brands in the case of distillers, dealers in liquors, etc.**—Receipt is acknowledged of your letter of March 12, 1919, in which you request a ruling to the effect that distillers and dealers in liquors may for the year 1918 take a reasonable amount for obsolescence of good-will, trade-marks, and trade brands, the value of which has been impaired or destroyed by prohibition legislation. In reply you are advised that a reasonable allowance for obsolescence of such assets may be taken by distillers and dealers in liquors against earnings between November 21, 1918, the date upon which the Agricultural Appropriation act, providing for war-time prohibition was enacted, and July 1, 1919, the date upon which the war-time prohibition is to become effective. To sustain a claim for a deduction for obsolescence in respect of good-will, trade marks, or trade brands, the taxpayer must show that the value of the property in question has been destroyed or will be destroyed not later than June 30, 1919, and that the taxpayer is not continuing in any similar trade or business. An allowance will be made only in respect of such assets as are assignable as distinguished from those attaching to the individuals owning or conducting the business or to the premises at which it is being or has been conducted. No allowance for obsolescence will be made in any case where, in connection with the operation of his previous business, the taxpayer has developed a good-will, trade-mark, or trade brand that will be valuable in continuing a lawful business after June 30, 1919.

3555 The values will be based on those as at March 1, 1913, if the good-will, trade marks, or trade brands were acquired or established prior to that date, or at the actual cost thereof, if acquired subsequent to February 28, 1913.

3556 Information helpful in establishing the values would be of the following general character:

3557 A. Where the good-will, trade marks, or trade brands were acquired prior to March 1, 1913:

1. The nature of business (whether distillers, wholesalers, or retailers, or a combination thereof.)

2. Date of foundation of business and whether organized as

an individual, partnership, or corporation. Also date and particulars of each change in the ownership or form of organization of the business, such as the admission or retirement of a partner or partners; the incorporation of a company and of each reorganization thereof.

3. In respect to the trade-marks or trade brands for which a deduction is claimed:

(a) The date established and by whom.

(b) The date of acquisition by the present owners.

(c) The price paid therefor and whether paid in cash or stock; if the latter, state the basis of the valuation on which the purchase price was determined.

(d) For each year from 1900 or the date of the establishment of the trade-mark or trade brand, if subsequent to that year to 1919 inclusive:

(I) Annual sales (quantity and amount).

(II) The gross profit on sales (i. e., the difference between the selling price and the cost price of the merchandise sold).

(III) The total expenses and losses of the business which, when deducted from the gross profit on sales, will produce—

(IV) The net income.

Where the records permit, the sales and gross profit on sales should be submitted for each class of merchandise sold and, if possible, for each trade-mark or trade brand in respect of which a deduction is claimed.

(V) The amount of capital invested in the business (i. e., capital or capital stock and paid in or earned surplus and undivided profits) as at the beginning of each year.

(VI) The amount included in the invested capital at the beginning of the period in respect of good-will, trade-marks, or trade brands and the date and amount of each subsequent addition to the good-will, trade-marks, or trade brands.

(e) Full details of each offer to purchase any of the trade-marks or trade brands, setting forth in particular the date of each offer, by whom and on whose behalf made: the amount of each offer, and whether payable in cash or stock; and the date or dates on which the purchase price was proposed to be paid, and the amounts to be paid on each such date.

4. Where a deduction is claimed in respect of good-will, as distinct from trade-marks or trade brands, the following information should be submitted:

(a) The date of acquisition, and from whom acquired.

(b) The amount paid therefor and whether paid in cash or in stock. If the latter, state the basis of the valuation on which the purchase price was arrived at.

(c) For each year from 1900 or the date of acquisition, if subsequent to that year, to 1919, inclusive.

(I) The annual sales of the business (quantity and amount) classified, if possible, as to the various kinds of merchandise sold.

(II) Gross profit on each class of merchandise sold, or if the records do not disclose the information, the gross profit of the business as a whole.

(III) Total yearly expenses and losses of the business

which, when deducted from the gross profit on sales, will produce—

(IV) The net income from the business.

(V) The amount of capital invested in the business (i. e., capital or capital stock and paid in or earned surplus and undivided profits), as at the beginning of each year.

(VI) The amount included in invested capital at the beginning of the period in respect of good-will and the date and amount of each subsequent addition to good-will, trade-marks, or trade brands.

(d) Full details of each offer to purchase the good-will, setting forth in particular the date of each offer; by whom and in whose behalf made; the amount of each offer and whether payable in cash or in stock, and the date or dates on which the purchase price was proposed to be paid, and if on more than one date, the amount payable on each such date.

3558 B. Where good-will, trade-marks, or trade brands were acquired subsequent to February 28, 1913:

(1) Dates of acquisition of good-will or of each trade-mark or trade brand.

(2) From whom acquired.

(3) Purchase price of good-will or of each trade-mark or trade brand.

(4) Whether purchased for cash or stock; if the latter, state the basis of the valuation on which the purchase price was arrived at.

3559 Similar information to that suggested in A—3d and 3e, and in A—4 should also be furnished for each of the five years prior to the date of acquisition, and for each year thereafter up to and including the year 1919.

3560 C. In the case of good-will, trade marks, and trade brands acquired prior to March 1, 1913, a statement should be submitted showing the development of prohibition and local option laws within the territory of the taxpayer during the five years preceding March 1, 1913. Such statement should show each prohibition or local option law enacted by any State or other governmental unit within the business territory of the taxpayer, and should also state the unsuccessful efforts at such legislation during such period. (Letter to Mr. Levi Cooke, Washington, D. C., signed by Commissioner Daniel C. Roper, and dated June 21, 1919.)

3561 **Allowance for obsolescence of good-will, trade-marks, and trade**
3554 **brands in the case of distillers, dealers in liquors, etc.**—This department has considered the request contained in your letter of June 23 last for a modification of the ruling relative to obsolescence of good-will, trade-marks and trade brands of distillers and dealers in liquors, the value of which has been impaired or destroyed by prohibition legislation, contained in this department's letter to you of June 21. The particular modification you desire is an extension of the period set forth in the ruling above referred to against the earnings of which the obsolescence may be taken as a deduction.

3562 In reply you are advised (1) that distillers and dealers in liquors are entitled to make a deduction (based upon actual cost or fair market value as of March 1, 1913) from gross income, on account of depreciation or obsolescence of their intangibles, such as good will, trade marks, trade brands, etc., such deduction being limited to assignable assets, the value of which has been destroyed by prohibition legislation, and (2) that in arriving at the taxable income for the first taxable year ending on or after January 31,

1918, the obsolescence fully accrued on that date is to be allowed as a deduction in computing the income subject to taxation under the Revenue Act of 1918, plus a further deduction of such proportion of the remaining value of the intangible assets as the interval between January 31, 1918, and the end of the taxable year bears to the total interval between January 31, 1918, and January 16, 1920, (unless at an earlier date the taxpayer discontinues his business, in which case such earlier date shall mark the close of the period), and (3) that for any taxable year following the taxable year just referred to a deduction in respect of the value of such intangible assets on January 31, 1918, based upon a ratable distribution will be permissible.

3563 It is the opinion of the department that the ratification of the 18th amendment in the month of January, 1918, by the States of Massachusetts, Maryland, and Kentucky, was the first definite indication that the prohibition amendment would be ratified by the requisite number of State Legislatures, and therefore that on January 31, 1918, a computable portion of the cost of good will, trade marks, trade brands, or the value thereof, on March 1, 1913, if acquired prior thereto (excluding any intangibles acquired since that date, the expenditures of which were deductible and had been deducted in computing income for tax purposes) had become obsolescent. On January 31, 1918, the intangilbe assets had an actual value, viz.: the then present value of the income to be derived therefrom between that date and January 16, 1920, or at an earlier date should the taxpayer discontinue his business prior thereto. This value as stated above should be distributed ratably over the period from January 31, 1918, to January 16, 1920 (unless at an earlier date the taxpayer discontinues his business, in which case such earlier date shall mark the close of the period). The excess of the cost of the intangibles or the value thereof, on March 1, 1913, if acquired prior thereto (subject to the exclusions mentioned above), over the value thereof, as of January 31, 1918, determined as outlined above, will represent the amount of obsolescence that was fully accrued on January 31, 1918. (Letter to Mr. Levi Cooke, Washington, D. C., signed by Acting Commissioner J. H. Callan, and dated August 19, 1919.)

3564 **Continued use of old ownership certificates.**—Old forms of ownership
[3323 certificates may be accepted pending issuance of Treasury Decision [illegible] now in course of preparation on the subject. (Letter to The Chase National Bank, New York, N. Y., signed by P. S. Talbert, Acting Assistant to the Commissioner, and dated September 11, 1919.)

(T. D. 2918.)

3565 **Further instructions relative to acceptance of Treasury certificates**
3518 **of indebtedness for income and profits taxes, supplementing Articles 1721 and 1732, Regulations 45.**—T. D. 2907 [¶3518] approved August 7, 1919, as to the acceptance of Treasury certificates of indebtedness in payment of income and profits taxes, is hereby amended by striking out the first sentence in the second paragraph reading "Deposits of Treasury certificates of indebtedness received in payment of income and profits taxes must be made by collectors with the Federal Reserve Banks of the districts in which the respective collectors' offices are located, unless otherwise specifically instructed by the Secretary of the Treasury," and inserting in lieu thereof, the following: "Deposits of Treasury certificates of indebtedness received in payment of income and profits taxes must be made by collectors, unless otherwise specifically instructed by the Secretary of the Treasury, with the Federal Reserve Bank of the district in which the collector's head office is located, or in case such head office is located in the same city with a branch Federal Reserve Bank, with such branch Federal Reserve Bank." (T. D. 2918, signed by Commissioner Daniel C. Roper, and dated September 12, 1919.)

3566 **Providing for relief of domestic corporations which have assumed**
604 **payment of income tax in respect to tax-free covenant bonds owned**
2997 **by non-resident aliens who are entitled to credits for personal exemption and dependents, but whose incomes from sources in the United States do not exceed such credits.**—The final edition of Regulations No. 45 is amended by inserting immediately after Article 363, a paragraph which will be known as Article 363a as follows:

Article 363a. **Personal exemption of non-resident aliens.** In case a non-resident alien is entitled to personal exemption and credits for dependents in accordance with Paragraphs (c), (d), (e), of Section 216 of the Revenue Act of 1918, and his gross income from sources in the United States, including bond interest, does not exceed his personal exemption and credits for dependents, a certificate, Form 1001B, should be executed and filed with the withholding agent, if any part of the gross income is derived from interest upon bonds of a domestic corporation which contain a tax-free covenant clause. The certificate may be filed with the withholding agent at the end of the calendar year but not later than February first of the succeeding year and all such certificates should be attached to the annual list return, Form 1013. The amount of tax due from the withholding agent as shown by Form 1013, may be reduced by 2 per cent of the aggregate amount of interest payments made to the nonresident alien upon tax-free covenant bonds during the calendar year, and the amount of tax represented by the certificates, payment of which was assumed on monthly list return, Form 1012, will not be included in the assessment against the withholding agent. The certificate may be filed only by a citizen or subject of the countries enumerated in Paragraph (a) or (b) of Article 307, as amended [¶3517]. In case tax in excess of a non-resident alien's tax liability has been withheld from interest upon bonds which do not contain a tax-free covenant clause, the nonresident alien should file or cause to be filed with the collector of internal revenue a return of his gross income from all sources within the United States, accompanied by a claim for refund on Form 46. (T. D. 2920, signed by Commissioner Daniel C. Roper, and dated September 15, 1919.)

3567 **Amount of tax paid by debtor on account of tax-free-covenant bond**
2841 **interest additional income to creditor on whose account the tax**
3322 **was paid.**—Receipt is acknowledged of your letter of June 20, 1919, asking for advice in regard to the office ruling which authorizes increase of the income by the 2% normal tax paid by the debtor corporation on bonds containing a tax-free-covenant clause. ¶In reply you are informed that this office holds that the obligor, in pursuance of a contract voluntarily entered into, guaranteed to pay a direct liability of the taxpayer which consisted in paying a certain amount of normal tax for him to the Government. The reduction of the payment of his tax liability under such a contract constitutes income to him by reducing his expenditures in that amount. The fact that the amount of the liability was paid direct to the Government instead of to the taxpayer and by him to the Government, does not preclude such an amount from constituting income to the taxpayer. (Letter to Hugh W. Martin, Secretary, Northwestern Trust Company, St. Paul, Minnesota, signed by J. H. Callan, Assistant to the Commissioner, by Geo. V. Newton, Head of Division, and dated September 13, 1919.)

(T. D. 2922.)

3568 2972a 3517 Amending Article 307, final edition of Regulations 45, dealing with non-resident alien individual entitled to personal exemption and credit for dependents.—The final edition of Regulations 45 is amended by changing Article 307 to read as follows:

Art. 307. *When nonresident alien individual entitled to personal exemption:* (a) The following is an incomplete list of countries which either impose no income tax or in imposing an income tax allow both a personal exemption and a credit for dependents which satisfy the similar credit requirement of the statute: Argentina; Belgium; Bohemia; Bolivia; Bosnia; Brazil; Bukowina; Canada; Carinthia; Carniola; China; Chile; Cuba; Dalmatia; Denmark; Ecuador; Egypt; France; Galicia; Goritz; Gradisca; Herzegovina; Istria; Lower Austria; Mexico; Montenegro; Moravia; Morocco; Newfoundland; Nicaragua; Norway; Panama; Paraguay; Persia; Peru; Portugal; Roumania; Russia (including Poles owing allegiance to Russia); Salzburg; Santo Domingo; Serbia; Siam; Silesia; Styria; Spain; Trieste; Tyrol; Upper Austria; Union of South Africa; Venezuela. (b) The following is an incomplete list of countries which in imposing an income tax allow a personal exemption which satisfy the similar credit requirement of the statute, but do not allow a credit for dependents: Bachka; Banat of Temesvar; Croatia; Salvador; India; Italy; Slavonia; Slovakia; Transylvania. (c) The following is an incomplete list of countries which in imposing an income tax do not allow to citizens of the United States not residing in such country either a personal exemption or a credit for dependents and, therefore, fail entirely to satisfy the similar credit requirement of the statute: Australia; Costa Rica; Great Britain and Ireland; Japan; The Netherlands; New Zealand; Sweden. The former names of certain of these territories are here used for convenience, in spite of an actual or possible change in name or sovereignty. A nonresident alien individual who is a citizen or subject of any country in the first list is entitled for the purpose of the normal tax to such credit for a personal exemption and for dependents as his family status may warrant. If he is a citizen or subject of any country in the second list he is entitled to a credit for personal exemption, but to none for dependents. If he is a citizen or subject of any country in the third list he is not entitled to credit for either a personal exemption or for dependents. If he is a citizen or subject of a country which is in none of the lists, then to secure credit for either a personal exemption or for dependents he must prove to the satisfaction of the Commissioner that his country does not impose an income tax or that in imposing an income tax it grants the similar credit required by the statute. (T. D. 2922, signed by Commissioner Daniel C. Roper and dated September 18, 1919.)

3569 3431 3551 Tax liability and withholding obligation on bond interest collected and paid in year subsequent to that in which the interest became due and payable.—[**Comment.** In view of the conflict of the following ruling with that shown at ¶3551, dated four days earlier, it seemed to us advisable, before reproducing Mr. Talbert's telegram to A. Iselin & Co., to call both rulings to the attention of the Bureau, specifically, with the request that we be advised which of the two does in fact set forth the attitude of the Government relative to the withholding feature. Having done so, we are now advised, orally, that the ruling given to A. Iselin & Co., that is, the following, controls. The Corporation Trust Company, September 23, 1919.]—Bond interest represents income to taxpayer when due and payable in accordance with article 54, Regulations 45 [¶2862d]. No tax required to be withheld from interest upon bonds due prior to March 1, 1913, but paid subsequent to that date. Interest due on and after March 1, 1913, subject to withholding at rates in force at time of payment but in case excess tax is withheld and paid to Government claim for refund on Form 46 will be considered. (Telegram to A. Iselin & Co., New York, N. Y., signed by P. S., Talbert, Acting Assistant to the Commissioner, and dated September 8, 1919.)

(I. T.-Mim. 2221.)

3570 **Consolidated returns: Apportionment and payment of tax.**—In
1407 connection with the assessment and payment of income and profits
3234 taxes of affiliated corporations, the opinion apparently prevails among taxpayers that the tax must be assessed against and paid by each corporation within an affiliated group. Unless a subsidiary has made a payment, the Bureau greatly prefers that the parent or principal reporting corporation take up and pay the entire tax, making any desired adjustment thereof by charging the affiliated corporations through their own records.

3571 The amount reported by the subsidiary in answer to Question 9, Form 1122, will be used as the basis for assessment and payment. If the subsidiaries have reported an apportionment in this manner, but the parent corporation has paid the tax installments on account of such subsidiaries, an amended Form 1122 showing "none" in answer to Question 9, should be filed. If the last condition obtains, but the taxpayer insists upon apportionment, the Collector of the subsidiary's district will request abatement of such portion of the subsidiary's tax as may have been previously paid by the parent corporation in another district.

3572 As a basis for such advice, the latter Collector will secure from the parent corporation a schedule showing apportionment of the total tax and installments to the respective affiliated corporations. If a subsidiary has filed a tentative return and paid an installment of the tax, it should be assessed the amount shown on Form 1122, and will pay future installments as they fall due. (I. T.-Mim. 2221, signed by Commissioner Daniel C. Roper, and dated August 8, 1919.)

(T. D. 2923.)

3573 **Authorizing debtor corporations and withholding agents to accept**
3323 **old forms of ownership certificates with respect to interest due on**
3564 **and prior to November 1, 1919, when received from continental United States and with respect to interest due on and prior to December 1, 1919, when received from abroad.**—1. In view of the fact that the revised forms of ownership certificates were placed at the disposal of the public over three months ago, this office is of the opinion that a reasonable period of time has elapsed in which to permit the public to have become familiar with them. In order, however, to prevent inconvenience to individuals and organizations required to use such forms, old forms of ownership certificates will be accepted with respect to interest due on and prior to November 1, 1919, when received from continental United States, and with respect to interest due on and prior to December 1, 1919, when received from abroad.

3574 2. Banks and collecting agents, debtor corporations, and withholding agents shall refuse to accept the old forms, in connection with interest due, after the respective dates named herein, and Collectors of Internal Revenue receiving monthly returns accompanied by certificates on the old forms, when it shall appear that such certificates were filed with debtor corporations or withholding agents, with respect to interest due subsequent to such dates, shall require the debtor corporation or withholding agent concerned to secure certificates on the revised forms.

3575 3. In order that the fulfillment of the requirements herein provided may cause as little hardships as possible to individuals, banks, collecting agents, debtor corporations, etc., Collectors should satisfy themselves that they have a sufficient supply of the revised forms on hand to meet anticipated demands and where the supply is not deemed sufficient,

requisition should be made without delay for such additional quantity as may be necessary. Collectors are requested to disseminate this information throughout their districts as quickly as possible. (T. D. 2923, signed by Commissioner Daniel C. Roper and dated September 24, 1919.)

3576 **Tax liability and withholding obligation on bond interest collected**
3551 **and paid in year subsequent to that in which the interest became**
3569 **due and payable.**—Reference is made to office letter of September 5, 1919, [Sept. 4: ¶3551] in which you were given a ruling in answer to your inquiry of June 26, 1919, relative to the rate of withholding which attaches to interest coupons maturing in one year and presented for payment in a subsequent year during which withholding is required at a different specified rate. ¶You are advised that after further consideration of the subject matter of your letter of June 26, 1919, this office is of the opinion that the second and third paragraph of office letter of September 5, 1919 [Sept. 4: ¶3551], should have read: ¶"In reply you are advised that Article 54 of Regulations 45 [¶2862d] states specifically that where interest coupons have matured but have not been cashed, such interest payment though not collected when due and payable, is nevertheless available to the taxpayer and should therefore be included in his gross income for the year in which the coupons matured. ¶Article 371 [¶3003] states that in the case of every payment made after February 24, 1919, the withholding agent must withhold at the rates prescribed by the present statute from the whole payment, not merely from that part which applies to the period after February 24, 1919. Hence, in the case of the foreign owners of American securities whose interest coupons matured during the years 1915, 1916, 1917 and 1918 but which were not presented for payment until the year 1919, the amount of these coupons should have been entered as income on their returns rendered for the years in which the coupons matured but the withholding agent was required to withhold from these coupons at the rate in force at the time of payment and in case excess tax was withheld and paid to the Government by reason of this requirement, the owners of the bonds to which you refer may exercise their privilege of filing with the collector on Form 46 a claim for refund of that portion of the tax withheld which was in excess of their true liability." ¶Therefore, you will disregard office letter of September 5, 1919 [Sept. 4: ¶3551] and be governed by the ruling given herein. (Letter to Morris F. Frey, Guaranty Trust Company, New York, N. Y., signed by P. S. Talbert, Acting Assistant to the Commissioner, by C. R. Trobridge, Acting Head of Division, and dated September 23, 1919.)

(T. D. 2924.)

3577 **Modification of Articles 1566 and 1567 of Regulation 45.**—1. Article
3106a 1566 of Regulations 45, first authorized April 17, 1919, is considered as not being warranted in law, and is hereby modified to read:

"**Art. 1566. Exchange of property and stock.**—Where property is transferred to a corporation in exchange for its stock, the exchange constitutes a closed transaction and the former owner of the property realizes a gain or loss if the stock has a market value, and such market value is greater or less than the cost or the fair market value as of March 1, 1913 (if acquired prior thereto), of the property given in exchange. For the rule applicable where a corporation, in connection with a reorganization, merger or consolidation, exchanges property for stock, see Article 1567."

3578 2. Article 1567 of Regulations 45, as amended by Treasury Decision
3432 2870, is amended to read as follows:

"**Art. 1567. Exchange of stock for other stock of no greater par value.**—In general, where two (or more) corporations unite their properties by either

(a) the dissolution of corporation B and the sale of its assets to corporation A, or (b) the sale of its property by B to A and the dissolution of B, or (c) the sale of the stock of B to A and the dissolution of B, or (d) the merger of B into A, or (e) the consolidation of the corporations, no taxable income is received from the transaction by A or B or the stockholders of either, provided the sole consideration received by B and its stockholders in (a), (b), (c), and (d) is stock or securities of A, and by A and B and their stockholders in (e) is stock or securities of the consolidated corporation, in any case of no greater aggregate par or face value than the old stock and securities surrendered. The term 'reorganization', as used in Section 202 of the statute, includes cases of corporate readjustment where stockholders exchange their stock for the stock of a holding corporation, provided the holding corporation and the original corporation, in which it holds stock, are so closely related that the two corporations are affiliated as defined in Section 240 (b) of the statute and article 633 [¶3235], and are thus required to file consolidated returns. So-called 'no-par-value stock' issued under a statute or statutes which require the corporation to fix in a certificate or on its books of account or otherwise an amount of capital or an amount of stock issued which may not be impaired by the distribution of dividends, will for the purpose of this section be deemed to have a par value representing an aliquot part of such amount, proper account being taken of any preferred stock issued with a preference as to principal. In the case (if any) in which no such amount of capital or issued stock is so required, 'no-par-value stock' received in exchange will be regarded for purposes of this section as having in fact no par or face value, and consequently as having 'no greater aggregate par or face value' than the stock or securities exchanged therefor." (T. D. 2924, signed by Commissioner Daniel C. Roper, and dated September 26, 1919.) [Comment: We are advised orally by the Bureau, in response to our specific inquiry, that the above T. D. 2924 is effective as if the two Articles had been so issued originally in Regulations No. 45. See ¶2592.—The Corporation Trust Company.]

(T. D. 2925.)

3579 Bonds under Sections 214 (a) (12), 234 (a) (14), and 1320 of the Revenue Act of 1918.—Sections 214 (a) (12) and 234 (a) (14) of the Revenue Act of 1918 provide in part as follows [¶1119 and ¶2215]:

"At the time of filing return for the taxable year 1918 a taxpayer may file a claim in abatement based on the fact that he has sustained a substantial loss (whether or not actually realized by sale or other disposition) resulting from any material reduction (not due to temporary fluctuation) of the value of the inventory for such taxable year, or from the actual payment after the close of such taxable year of rebates in pursuance of contracts entered into during such year upon sales made during such year. In such case payment of the amount of the tax covered by such claim shall not be required until the claim is decided, but the taxpayer shall accompany his claim with a bond in double the amount of the tax covered by the claim, with sureties satisfactory to the Commissioner, conditioned for the payment of any part of such tax found to be due, with interest."

3580 Section 1320 of the same Act provides, in part [¶2220]:

"That wherever by the laws of the United States or regulations made pursuant thereto, any person is required to furnish any recognizance, stipulation, bond, guaranty, or undertaking, hereinafter called 'penal bond', with surety or sureties, such person may, in lieu of such surety or sureties, deposit as security with the official having authority to approve such penal bond, United States Liberty bonds or other bonds of the United States in a sum equal at their par value to the amount of

such penal bond required to be furnished, together with an agreement authorizing such official to collect or sell such bonds so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. The acceptance of such United States bonds in lieu of surety or sureties required by law shall have the same force and effect as individual or corporate sureties, or certified checks, bank drafts, post-office money orders, or cash, for the penalty or amount of such penal bond. The bonds deposited hereunder and such other United States bonds as may be substituted therefor from time to time as such security, may be deposited with the Treasurer, * * * of the United States, * * * which shall issue receipt therefor, describing such bonds so deposited. As soon as security for the performance of such penal bond is no longer necessary, such bonds so deposited, shall be returned to the depositor."

3581 Article 268 of Regulations No. 45 [¶2963g] provides in part as follows, relative to claims for losses in inventory and from rebates:

"In the case of a claim in abatement filed with a return payment of the amount of the tax covered thereby shall not be required until the claim is decided, provided the taxpayer files therewith a bond on Form 1124 in double the amount of the tax covered by the claim, conditioned for the payment of any part of such tax found to be due with interest at the rate of 12 per cent per annum. The bond shall be executed by a surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds and shall be subject to the approval of the Commissioner."

3582 The bond executed on Form 1124 [Supplementary Page 50], pursuant to Article 268 of Regulations No. 45, together with the abatement claim, should be forwarded by the collector to the Commissioner of Internal Revenue. When it is received by the Commissioner it will be detached from the abatement claim and forwarded the Surety Bond Section of the Treasury Department for certification as to the sufficiency of the sureties. The Surety Bond Section will, after certification, return the bond to the Commissioner for his approval. When he has approved the bond he will cause it to be attached to the abatement claim.

3583 In case the claimant, in accordance with the provisions contained in Section 1320 of the Revenue Act of 1918, elects to offer, in lieu of the surety or sureties provided for on Form 1124, United States Liberty Bonds or other bonds of the United States as security he should execute in duplicate a bond and agreement on Form 1124a, prescribed below. The original should accompany the United States bonds offered as security; the duplicate should be forwarded by the collector with the abatement claim to the Commissioner. If such bond and agreement is executed by a corporation a duly certified copy of the resolution of the board of directors, authorizing the execution, should be attached. The United States Liberty Bonds or other bonds of the United States, offered as security, shall at their par value be not less than the amount of the penal sum of the bond executed on Form 1124a, which shall be in double the amount of the tax covered by the abatement claim. The bonds so offered as security must be delivered to the Commissioner of Internal Revenue at the obligor's risk and expense. Coupon bonds cannot safely be forwarded by registered mail unless insured by the obligor against risk of loss in transit. Registered bonds so offered as security must be registered in the name of the obligor and duly assigned to the Commissioner of Internal Revenue at or before the date of deposit with the Commissioner and need not be insured when forwarded by registered mail, unless the obligor so elects. In connection with effecting insurance of bonds shipped reference is made to Article 187 (a) of Regulations No. 2, Revised.

3584 The Commissioner of Internal Revenue will issue a receipt in duplicate for United States Bonds so deposited with him as security, the original of the receipt to be given to the obligor and the duplicate to be retained by the Commissioner for his files. Upon receipt by the Commissioner of the United States Bonds so offered as security and upon satisfying himself as to their ownership and as to the sufficiency of the agreement for him to collect or sell, and in case of registered bonds as to the regularity of the assignments, he will approve the bond executed on Form 1124a, and deposit the United States Bonds offered as security with the Treasurer of the United States, as provided in paragraph 7 of Department Circular No. 154 (1919), dated June 30, 1919, and the Treasurer of the United States will, as provided in said circular, give receipt therefor in duplicate describing the bonds so deposited, the original to be delivered to the Commissioner of Internal Revenue and the duplicate to be retained by the Treasurer for his files.

3585 Bonds of the United States shall be returned to the obligor as soon as the security for the performance of such penal bond is no longer necessary. Registered bonds shall be reassigned to the owner when the liability is cancelled.

3586 These special instructions are prescribed for the guidance of collectors of internal revenue pursuant to the provisions of Treasury Department Circular No. 154 as to the acceptance of United States Bonds in lieu of surety or sureties on penal bonds. (T. D. 2925, signed by Commissioner Daniel C. Roper, and dated September 26, 1919.)

3587 **Organization of a Committee of Review and Appeals to take over**
3124 **the work of the Advisory Tax Board which goes out of existence on October 1.**—Taxpayers in many parts of the country have expressed interest in the plans of the Bureau for continuing the important work entrusted to the Advisory Tax Board. The function of the Board has been to review, upon appeal, the administrative decisions of the Income Tax Unit in important income and excess profits cases, particularly cases involving exceptional or unusual conditions with respect to questions of invested capital, amortization, depletion, depreciation, etc. The newly organized Committee on Review and Appeal will take over this highly important function, and taxpayers are assured of the same thoughtful and impartial consideration of their problems that has been a feature of the work of the retiring Board.

3588 P. S. Talbert, head of the Technical Division of the Income Tax Unit, has been selected as Chairman of the Committee because of his exceptional experience and peculiar qualifications for this important task. Mr. Talbert is one of our leading experts on income tax matters. He worked continuously with the Tax Advisers in drafting the administrative regulations for the enforcement of the 1917 law and has also played an important part in framing the regulations under the Act of February 24, 1919. Mr. Talbert will be relieved from duty as Head of the Technical Division in order that he may devote his entire time to the work of the Committee.

3589 The individual members of the Committee on Review and Appeals will be selected with the greatest care from our most experienced men in order that their combined judgment may represent the best experience and highest intelligence of the Bureau's personnel. I am confident that this body of men will continue in a most satisfactory manner the work inaugurated by the Advisory Tax Board and taxpayers may be assured of courteous, intelligent and impartial hearings. (Announcement by Commissioner Daniel C. Roper, dated September 27, 1919.)

3590 **Ownership Certificates—Defining revised forms and old forms.**
3573 Referring Treasury Decision 2923, please define Revised Forms and Old Forms. Do you consider Forms 1000 and 1001 Revised February, 1919, as Revised Forms or Old Forms? Please telegraph reply. (Answer) Revised Forms of ownership certificates are those issued February, 1919, and those issued subsequently. . Old Forms are certificates in use prior to February, 1919. Forms 1000 Revised February, 1919, and 1001 Revised February, 1919, considered Revised Forms. (Telegram from The Chase National Bank, New York, N. Y., and the answer thereto signed by Commissioner Daniel C. Roper, and dated September 29, 1919.)

3591 **Interest Coupons Without Ownership Certificates—Affidavit**
3100a **required.**—When interest coupons are unaccompanied by ownership certificates affidavits should be secured by first bank as provided in Article three six eight, Regulations forty-five. Such affidavit should accompany the ownership certificates to debtor corporation or withholding agent and should be forwarded to collector Internal Revenue in accordance with usual procedure. Separate affidavit required with respect to each interest payment upon bonds of different issue and with respect to each different due date of same. (Telegram to Boissevain & Co., New York, N. Y., signed by Commissioner Daniel C. Roper, and dated September 18, 1919.)

(T. D. 2927.)

3592 **Special Excise Tax on Corporations [Act of August 5, 1909]—Decision of Court.**—The appended decision of the United States District Court for the District of Connecticut in the case of the United States v. Aetna Life Insurance Company is published for the information of internal revenue officers and others concerned. [Caption only.]

3593 **Deductions from Gross Income.—Taxes paid on behalf of Corporation.**—Taxes paid to a State by various corporations upon shares of their stock owned by another corporation, are not deductible from gross income of this latter corporation as taxes "paid by it," such taxes being not paid by this corporation, but being paid in its behalf by other corporations. (T. D. 2927, signed by Commissioner Daniel C. Roper, and dated September 30, 1919.)

(T. D. 2929.)

3594 **Modification of Article 163, Regulations No. 45-Depreciation**
2912 **of intangible property.**—Articles 163, Regulations No. 45, is
3554 modified to read as follows by eliminating therefrom the last sentence reading, "There can be no such allowance in respect of good will, trade names, trademarks, trade brands, secret formulae or processes":

Art. 163. Depreciation of intangible property.—Intangibles, the use of which in the trade or business is definitely limited in duration, may be the subject of a depreciation allowance. Examples are patents and copyrights, licenses and franchises. Intangibles, the use of which in the business or trade is not so limited, will not usually be a proper subject of such an allowance. If however, an intangible asset acquired through capital outlay is known from experience to be of value in the business for only a limited period, the length of which can be estimated from experience with reasonable certainty, such intangible asset may be the subject of a depreciation allowance, provided the facts are fully shown in the return or prior thereto to the satisfaction of the Commissioner. (T. D. 2929, signed by Commissioner Daniel C. Roper, and dated October 7, 1919.)

(T. D. 2933.)

3595 **New York State transfer (inheritance) tax not deductible as**
1058 **a "tax".**—The appended decision of the United States District
1256 Court for the Southern District of New York in the case of Elizabeth
2900 S. Prentiss vs. Mark Eisner, Collector of Internal Revenue, is published for the information of internal-revenue officers and others concerned. The decision confirms and supports the ruling contained in Article 134 [¶2900] of Regulations No. 45. (T. D. 2933, signed by Commissioner Daniel C. Roper, and dated October 9, 1919.)

Decision of United States District Court.

[Act of Oct. 3, 1913.]

Elizabeth S. Prentiss vs. Mark Eisner, Collector,

1. The tax imposed by the laws of New York upon the transfer of property by will or under the interstate laws is not deductible in ascertaining the taxable net income of the legatee or distributee under the act of October 3, 1913. It is not a "tax", within the meaning of the provision permitting the deduction of "all national State, county, school, and municipal taxes paid within the year". (Sec. II, par. B).

2. A tax upon the right to receive an interest in the estate of a decedent is not a charge either against the person receiving the interest or the property or right accruing to him. The legatee or distributee merely receives the balance due after payment of the tax. He does not receive the entire interest, and then pay the tax; and he is consequently not entitled to deduct the amount as a tax paid by him.

3596 Augustus N. Hand, District Judge: This is a demurrer to a complaint whereby the plaintiff seeks to recover income taxes for the year 1913, paid under protest. The objection urged is that the Commissioner refused to allow as a deduction transfer taxes which were paid to the State of New York on December 12, 1913, upon an inheritance which vested June 25, 1913.

3597 Paragraph B, Section II of the Act of October 3, 1913, [Revenue Act of 1918, Sec. 213 (A) (3)-(C) ¶1055], provides:

> "That in computing net income for the purpose of the normal tax there shall be allowed as deductions ***Third, all national, state, county, school and municipal taxes paid within the year, not including those assessed against local benefits;***"

3598 The Commissioner of Internal Revenue has ruled that [¶1058, ¶1256]:

> "A collateral inheritance tax levied under the laws of the State of New York being, as it is, a charge against the corpus of the estate, does not constitute such an item as can be allowed as a deduction in computing income tax liability to either the estate or a beneficiary thereof."

3599 The plaintiff contends that the New York transfer taxes are excise taxes imposed by the State upon the right to receive an interest in a decedent's estate, and as such, are within the deductions allowed by statute. The Government, on the other hand, says that these taxes are an appropriation by the State of a portion of the decedent's estate before the remainder vests in the legatee. This latter contention is in accordance with the decision in United States v. Perkins, 163 U. S. 625, where the Court said at page 630:

> "The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax and it is only upon this condition that the legislature consents to a bequest of it."

3600 This decision which so far as I know has not been questioned cannot be reconciled with any theory that the tax is refused a right of succession already vested in the legatee.

3601 At the outset we have the important fact that property inherited or transmitted by will is not treated as income in the income tax act,but, on the contrary, is not only not included, but specifically exempted. In other words, in the hands of a legatee, devisee, heir or distributee, such property is capital and not income. Under these circumstances, it would seem inconsistent with charges against this capital, which accrued prior to, or simultaneously with, the devolution of it could be deducted from income tax returns. Notwithstanding this, the language of the Act would apparently make the transfer taxes a necessary deduction if they are charges against the person receiving the property, or against either the property or the right accruing to him.

3602 The cases are extremely confused and their reasoning is unsatisfactory. It is admitted by them all that the tax is not upon the property itself which is transmitted. To avoid the unconstitutionality of a direct tax upon the property itself which was not apportioned among the States, the Court of Appeals of New York said as to the Federal Tax of 1898, in Matter of Gihon, 169 N. Y. 443:

> "***the full amount of the legacy is in law paid to the legatee and the deduction made from it and paid to the state or federal government is paid on account of the legatee from the legacy which he receives."

3603 It is argued that the personal liability of the executor or administrator under the New York law for the payment of the tax makes the view taken by the foregoing case erroneous, but, as Judge Cullen there said, the obligation of the executor or administrator to pay the tax is a mere rule of administration to insure its payment, and not proof that the tax is either on the right to transmit or upon the property itself.

3604 I do not think it follows because the right to transmit or the right to receive the property of a decedent is a privilege granted by the State, and not a common right, that the tax is imposed upon either right. Judge Gray's statement in Matter of Swift, 137 N. Y. 77, is an accurate description of what occurs:

> "What has the State done, in effect, by the enactment of this tax law? It reaches out and appropriates for its use a portion of the property at the moment of its owner's decease; allowing only the balance to pass in the way directed by the testator, or permitted by its intestate law."

3605 To say that the legatee, devisee, heir or distributee receives the property without any deduction and then pays the tax is really a most artificial way of viewing the transaction. In the case of personal property he really only gets the balance with a credit as a matter of convenient bookkeeping to the amount of the tax. In the case of real estate he receives properly speaking an equity. He can pay the tax and get the the land unencumbered, or the State can foreclose the lien and he will receive the balance. In either case the only natural way to treat him is as a recipient of a net amount. The condition of the devolution of the property is the receipt of the transfer tax by the State.

3606 In United States v. Perkins, 163 U. S. 625, the testator bequeathed his property to the United States. The Supreme Court held that the New York transfer tax was upon the testator's right to dispose of his prop-

erty, and thus sustained the tax for, if it had been treated as upon any right of succession of the United States, the tax could not have been lawfully imposed. This case has been cited with approval in New York decisions both under the old and new transfer tax acts.

3607 I have carefully examined the interesting briefs submitted by counsel and am convinced that the tax cannot properly be regarded as an imposition upon either the property or the right to receive a gross amount of the property of a decedent represented by a legacy, devise or distributive share, but that the property and the right to receive it passed, reduced by the amount of the tax measured by a percentage of the value of the gross share. It is impossible to reconcile the conflicting expressions in judicial opinions, but this treatment of the situation will, I think, accord with the results reached by the various cases. I can see no substantial difference between the New York Transfer Tax Act in operation in 1913, and the earlier Act, and I do not regard any of the Acts as imposing a tax upon the plaintiff's right of succession which is deductible in her income tax return.

3608 The demurrer is sustained. (Opinion appended to and made a part of T. D. 2933, signed by Commissioner Daniel C. Roper, and dated October 9, 1919.)

3609 **Resident and nonresident alien seamen. Execution of**
3147 **Form 1078.**—Receipt is acknowledged of your letter of September
3433 6, 1919, requesting information relative to the liability of an employer of alien seamen, with respect to withholding part of their wages for income tax purposes, and inquiring whether any exception is made to that part of the regulations requiring that Form 1078, Revised, must be executed before an officer qualified to administer oaths. In reply you are advised that your inquiries are answered in the order in which they are numbered in your letter as follows:

3610 1. Article 92 (a) [¶ 3434], which is added to Regulations 45 by
3434 Treasury Decision 2869, provides that "Nonresident alien seamen are taxable only on income from sources within the United States," and further, that "Wages earned by an alien seaman regularly engaged in foreign trade are not to be regarded as from sources within the United States even though the ship flies the American Flag, or although during a part of that time the ship touched at U. S. ports and remained there a reasonable time for the transaction of its business." It follows therefore that in such cases the wages paid to nonresident alien seamen by an employer are not regarded as income from sources within the United States and the employer is not required to withhold. It should be remembered, however, that for purposes of information such an employer is required by Section 256, Article 1071 [¶ 3054] thereunder, to render a return to the Commissioner on Form 1099, in all cases where the employer made payment of $1000 or over of wages to resident alien seamen in any taxable year.

3611 2. Article 312 (a) [¶ 3435], which is added to Regulations 45 by
3435 Treasury Decision 2869, provides in the case of alien seamen that "Residence may be established on a vessel regularly engaged in coastwise trade." This provision, however, merely places alien seamen employed on a vessel regularly engaged in coastwise trade on the same footing with an alien employed within the United States for purposes of proving residence within the United States. The employer should, therefore, be governed by the requirements of Article 315 [¶2976] of Regulations 45 with respect to the necessity for filing Form 1078, Revised.

3612 3. If an officer, qualified to administer oaths, is not reasonably
2976 accessible, Form 1078, Revised, will be accepted if signed in the
3154 presence of an official of the employer company under whose supervision the employee's duties are performed, and one other credible witness. (Letter to Shipowners' Association of the Pacific Coast, San Francisco, Calif., signed by P. S. Talbert, Acting Assistant to the Commissioner, by C. R. Trobridge, Acting Head of Division, and dated September 20, 1919.)

(Decision.)

(Revenue Act of 1916.)

258 Fed. 208.

Income Tax Liability of a Trustee in Bankruptcy.

In re. Heller, Hirsh & Co.

(U. S. Circuit Court of Appeals, Second Circuit.)

3613 Appeal from the District Court of the United States for the Southern
1398 District of New York. In the matter of Heller, Hirsh & Co., a
1429 corporation, bankrupt. A petition by the United States attorney
3205A for an order directing the trustee of the bankrupt to pay to the
3228 collector of internal revenue for the Second district of New York $2,400 as taxes on income under Act Sept. 8, 1916, as a preferred claim, was denied, and the government appeals. Affirmed.

Before WARD, ROGERS, AND MANTON, Circuit Judges.

3614 PER CURIAM. The United States attorney filed a petition for an order directing the trustee of the bankrupt corporation to pay to the collector of internal revenue for the Second district of New York the sum of $2,400 under Act Sept. 8, 1916, c. 463, 39 Stat. 756, as taxes upon income for the year 1916, as a preferred claim. The trustee was not carrying on the business of the bankrupt, and the funds said to constitute net income were the result of a compromise made by him with a foreign corporation of a claim for nonpayment of salary and commissions by the foreign corporation to the bankrupt corporation as its agents between the years 1910 and 1914. The referee, John J. Townsend, Esq., recommended that the prayer of the petition be denied, and his report, which is set out below [in part], was confirmed without opinion by Judge Hough. We are quite clear that under section 13(c) of the act of 1916 (Comp. St. Sec. 6336m) [1918 Act, ¶ 1429 herein.] only net income earned by a trustee while operating the business of a bankrupt corporation is taxable.

3615 The order is affirmed.

3616 NOTE.—Referee Townsend's opinion, referred to in the opinion, here follows [in part]:

* * * * * * * * *

3617 "Carefully prepared briefs have been filed with the Referee by the parties. I find in the briefs no decisions which I deem decisive of the present motion, viz., no decisions where the government asserts a claim for an income tax against a trustee in bankruptcy of a corporation or individual adjudicated a bankrupt and therefore presumably insolvent. I refer below to certain decisions which in my opinion aid in deciding the present motion.

3618 "In my opinion the present motion depends for its determination upon a judicial interpretation of the act of September 8, 1916, a copy of which act accompanies this report. Such interpretation should be a fair one. It is not the duty of this court or of the government authorities to resort to Procrustean methods of interpretation against the taxpayer.

3619 "I find nothing in the act of September 8, 1916, to indicate that Congress intended to impose an income tax upon a trustee in bankruptcy in respect to the assets of a bankrupt corporation which he has taken over to be marshaled and distributed among the creditors of the corporation. To my mind the text of the act of September 8, 1916, does not indicate any such purpose. This view of the act does not deprive the government of its just due. The dividends declared and distributed to the creditors are presumptively income in the hands of the latter subject to an income tax to be assessed against the latter.

* * * * * * * * *

3620 "Great stress is laid by the government on the provisions of section 13(c) of the act of September 8, 1916. The presence of subdivision (c) in the act of September 8, 1916, and its absence from the prior act of October 3, 1913, has to my mind no significance in the present case in view of the peculiar language of subdivision (c).

3621 "The language used in subdivision (c) shows that the subdivision was not intended by Congress to apply in the case of receivers or trustees in bankruptcy or assignees who merely marshaled and distributed the assets of an insolvent corporation among its creditors. In terms subdivision (c) applies only in cases where receivers or trustees in bankruptcy or assignees 'are operating the property or business of corporations' and thus may be in the receipt of a 'net income' as defined in the prior sections of the act. I regard the quoted words as of marked significance.

3622 "To my mind the subdivision was inserted in the act to meet the specified case of the profitable operation of the business of a corporation by the officers mentioned; for instance, the operation of the business of a railroad corporation by receivers or the operation of the business of a manufacturing corporation by a trustee in bankruptcy, etc.

* * * * * * * * *

3623 "The decisions cited in the brief filed by the government, such as Edwards v. Keith, Collector, 231 Fed. 111, 145 C. C. A. 298, L. R. A. 1918A, 498 (C. C. A., 2d Circuit), and Towne v. Eisner, Collector, 245 U. S. 418, 38 Sup. Ct. 158, 62 L. Ed. 372, L. R. A. 1918D, 254 (January, 1918), turning as they do on what is and what is not taxable income, no question arising in those cases as to the status of the taxes, are not pertinent in my view of the case before me.

3624 "For like reason I have not discussed the correctness of the amount of net income upon which the government claims a tax. This amount, as well as his liability for any tax, is challenged by the trustee in bankruptcy.

3625 "I am of the opinion that the trustee in bankruptcy is entitled to an order denying the prayer of the petition filed by the United States attorney for the Southern district of New York, on behalf of the collector of internal revenue for the Second district of New York." (258 Fed. 208.)

3626 **Deductibility of losses sustained by estates or trusts and**
2901 **the bearing of such losses on the taxable income of bene-**
2991 **ficiaries.**—Receipt is acknowledged of your letter of October 3,
2994 1919, which reads as follows: "With reference to the letter dated August 9, 1919—IT:T:RR-FMH—signed by C. P. Trobridge, Acting Head of Division, is it possible to obtain any definite reply to our letter of July 24, 1919, inquiring as to whether or not when a fiduciary sells stock or bonds of a trust estate at a loss, the beneficiary is entitled to a credit, deducting such loss against his income, only paying a tax on the net amount of his taxable income in excess of the loss? Inasmuch as your letter of August 9 stated that the matter was at that time under consideration and we have received no other reply, we thought it possible that the matter might have been overlooked." ¶ In reply you are advised that this office holds that, under the Revenue Act of 1918, (a) any loss resulting from the sale of stocks, bonds or other property, owned by a trust, which would be an allowable deduction from the gross income of an individual, is an allowable deduction from the gross income of a trust, whether or not the income of such trust is "to be distributed to the beneficiaries periodically, whether or not at regular intervals," and whether or not there is any requirement in the instrument creating the trust, a decree of court, or general law, that the principal of the trust estate be kept intact at the expense of income as against such loss; that (b) such a deduction is not allowable as against the current or future gross income of the present beneficiaries or of those who will receive the property at the termination of the trust; and that (c) a beneficiary is not required to include in his personal return as a part of "his distributive share, whether distributed or not, of the net income of the . . . trust for the taxable year," any part of the amounts allowed to the trust as a whole as a deduction for loss resulting from the sale of the property. (Letter to The Equitable Trust Company of New York, New York, N. Y., signed by Commissioner Daniel C. Roper, and dated October 13, 1919.)

3627 **Articles 1566 and 1567, Regulations 45: Interpretative com-**
3577 **ments.**—On September 26 the Bureau of Internal Revenue promulgated Treasury Decision 2924 modifying Articles 1566 and 1567 of Regulations 45. Two questions involving interpretation of the new Treasury Decision are raised. An early expression of an opinion on the first question and confirmation of our view as to the second question, will be appreciated.

Meaning of "Market Value."—Question 1. Article 1566, as amended, provides that where property is transferred to a corporation in exchange for its stock the exchange constitutes a closed transaction and the former owner of the property realizes a gain or loss, if the stock has a "market value, and such market value" is greater or less than the cost or the "fair market value" as of March 1, 1913 (if acquired prior thereto), of the property given in exchange. The question raised is whether the words "market value, and such market value" permit a presumption that the decision contemplates an actual market before the case would be brought within the provision as to profit or loss, or the words "market value, and such market value" are intended by the Treasury Department to mean "fair value." The use of the words "fair market value as of March 1, 1913" immediately following that part of the Decision under discussion would indicate that the word "fair" was deliberately omitted in the first instance and that the words "market value" were intended to convey the thought that there must be an actual market. This interpretation is

further borne out by the fact that if the word "fair" be inserted before the word "market" in the first instance, the sentence might properly have been concluded with the word "loss." We can conceive of no situation in which property could be transferred in exchange for corporate stock which, under the rulings of the Bureau, would be considered to have no "fair value." (Answer.) In your letter of October 7, 1919, you ask whether the words "market value" as used in Treasury Decision 2924 are used as an equivalent of "fair market value" or whether it is intended that an exchange of property for stock shall not be regarded as a closed transaction unless there was an actual market for the stock so acquired. ¶In reply I beg to say that the words "market value" as used in that Treasury Decision are used as an equivalent of "fair market value," and that stock is to be regarded as ordinarily having a market value, even though no actual market for it can be established. Market value in this sense may, therefore, be regarded as the price which might reasonably be presumed would be agreed upon between a willing buyer and a willing seller.

3628 3578 **Application of the limitation as to "no greater aggregate par or face value.**—Question 2. In interpreting Article 1567, as amended, the opinion has been expressed that the phrase "in any case of no greater aggregate par or face value than the old stock and securities surrendered" is a limitation governing only "(e) the consolidation of the corporations," and not a limitation with respect to (a), (b), (c) and (d). The statue indicates that the limitation intended by the Regulations is applicable to (a), (b), (c), (d) and (e). (Answer.) You also ask whether in interpreting Article 1567 of Regulations No. 45, as amended, the phrase "in any case of no greater aggregate par or face value than the old stock and securities surrendered" is a limitation governing only "(e) the consolidation of the corporation," or a limitation applying to each of the subdivisions (a), (b), (c), (d) and (e). ¶ In reply you are advised that this phrase limits not only subdivision (e), but also the preceding subdivisions. This article of the regulations is founded on Section 202 (b) of the Revenue Act of 1918, which would afford no basis for attaching this qualification to subdivision (e) only. (Letter, embodying inquiries, from Baker and Baker, Washington, D. C., and the letter of reply signed by Commissioner Daniel C. Roper, and dated October 16, 1919.)

(T. D. 2935.)

3629 3026 **Failure to file returns where tentative returns have been filed, Article 443 of Regulations 45 amended.**—Section 1309 of the Revenue Act of 1918 (approved February 24, 1919) provides in part as follows [¶ 2591]: "That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act."

3630 In pursuance of the foregoing provision of law, Article 443 of Regulations 45 [¶ 3026] is hereby amended to read as follows:

Art. 443. Extension of time by collector.—It is important that the taxpayer render before the return due date a return as complete and final as it is possible for him to prepare. However, in cases of sickness or absence collectors are authorized to grant an extension of not exceeding thirty days, where in their judgment such further time is actually required for the making of an accurate return. See Article 1002 [¶ 3032]. The application for such extension must be made prior to the expiration of the

period for which the extension is desired. The absence or sickness of one or more officers of a corporation at the time the return is required to be filed will not be accepted as a reasonable cause for failure to file the return within the prescribed time, unless it is satisfactorily shown that there were no other principal officers available and sufficiently informed as to the affairs of the corporation to make and verify the return. As a condition of granting an extension of time for filing a return the collector may require the submission of a tentative return and estimate of the tax on form 1040-T in the case of individuals, or on form 1031-T in the case of corporations, and the payment of one-fourth of the estimated amount of tax. Where a taxpayer has filed a tentative return and has failed to file a complete return within the period of the extension requested by him the complete return when filed is subject to penalties prescribed for delinquency. Where a tentative return has been filed and no time has been fixed within which a complete return must be filed, the collector may at any time send notice to the taxpayer to file a complete return within a period of time therein specified by him, and a taxpayer who fails to comply with such request will incur the penalties prescribed by statute for delinquency in filing a return. (T. D. 2935, signed by Commissioner Daniel C. Roper, and dated October 16, 1919.)

(T. D. 2937.)

3631 **Assessments for Drainage.**—Article 133 of Regulations 45 is
2899 hereby amended to read as follows:

Art. 133. Taxes for local benefits.—So-called taxes, more properly assessments, paid for local benefits, such as street, sidewalk and other like improvements, imposed because of and measured by some benefit inuring directly to the property against which the assessment is levied, do not constitute an allowable deduction from gross income. A tax is considered assessed against local benefits when the property subject to the tax is limited to the property benefited. Special assessments are not deductible, even though an incidental benefit may inure to the public welfare. The taxes deductible are those levied for the general public welfare by the proper taxing authorities at a like rate against all property in the territory over which such authorities have jurisdiction. Assessments under the statutes of California relating to irrigation and of Iowa relating to drainage, and under certain statutes of Tennessee relating to levees, are limited to property benefited, and when it is clear that the assessments are so limited, the amounts paid thereunder are not deductible as taxes. When assessments are made for the purpose of maintenance or repair of local benefits, the taxpayer may deduct the assessments paid as an expense incurred in business, if the payment of such assessments is necessary to the conduct of his business. When the assessments are made for the purpose of constructing local benefits, the payments by the taxpayer are in the nature of capital expenditures and are not deductible. Where assessments are made for the purpose of both construction and maintenance or repairs, the burden is on the taxpayer to show the allocation of the amounts assessed to the different purposes. If the allocation can not be made, none of the amounts so paid is deductible. (T. D. 2937, signed by Commissioner Daniel C. Roper, and dated October 16, 1919.)

3632 **Deduction for depreciation in computing net income of**
2910 **estates and trusts and the bearing of such deduction on the**
2991 **taxable income of beneficiaries.**—[In connection with the fol-
2994 lowing, ¶3626 should be read.] Reference is made to our letter
3626 of May 8, 1919, in which you refe to office letter of April 14, 1919, wherein you are informed that an individual who receives her income from three trust estates is not permitted to deduct in her personal return the amount of depreciation sustained during the year on real estate which forms a part of the assets of these trusts. You now state you note that Article 164 [¶2913] of Preliminary Regulations 45, which had reference to this question, has been eliminated from the last edition of the Regulations, and you ask to be advised whether the decision contained in office letter of April 14 has been modified. ¶ In reply you are advised that an individual who receives income from a trust estate is not permitted to claim a deduction in his personal income tax return for any depreciation sustained during the year on real estate or other assets of the estate. Under the Revenue Act of 1918, however, it is permissible for the fiduciary, in ascertaining the net income of the estate or trust for which he acts, to deduct a proper amount for the depreciation sustained during the taxable year, whether or not the terms of the will or agreement creating same or a decree of Court provides for the taking care of depreciation which may be sustained on the property held in trust. (Letter to William R. Conklin, New York, N. Y., signed by J. H. Callan, Assistant to the Commissioner, by P. S. Talbert, Head of Division, and dated October 6, 1919.)

3633 **Return by corporation for taxable year during which its**
3205a **affairs are placed in hands of receiver, etc., for purposes of**
3228 **dissolution.**—Receipt is acknowledged of your letter dated October 16, 1919, relative to the meaning of Article 547 of Regulations 45. ¶ In reply you are advised that your question as to whether, under Article 547 of the Regulations, any profit or loss resulting from the sale of capital assets by the trustees or receivers during the process of liquidation is to be merged with the profit or loss resulting from the regular business of the corporation during the same taxable year prior to the taking over of the affairs of the corporation by the trustees or by the receiver is answered in the affirmative. ¶ For information as to the meaning of the term "taxable year" as used in the Revenue Act of 1918 and for further information as to the requirements of the Statute with respect to the filing of returns by receivers, trustees in dissolution, trustees in bankruptcy and assignees, your attention is invited to Articles 25 [¶2839] and 622 [¶3228] of Regulations 45. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated October 24, 1919.)

INSERT THIS PAGE TO FACE PAGE 522.

THE INDEX on the blue sheets at the back of the book indexes the Law and all regulations, etc., relating thereto, to and including page 522 opposite. Page 523 following, and the pages following that page, are unindexed, temporarily.

THE RUNNING TABLE OF CONTENTS, on Supplementary Page 129, at the back of the book, should be consulted for matter temporarily unindexed. This table consists of a list of all Treasury Decisions, etc., printed in the Service, showing the general subject covered by each regulation, ruling or other matter.

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THE RUNNING TABLE OF CONTENTS on Supplementary Page 129, at the back of the book, should be consulted for matter temporarily unindexed. This table consists of a list of all Treasury Decisions, etc., printed in the Service, showing in a general way, the subject covered by each regulation, ruling or other matter.

(T. D. 2943)

3634 Limited partnership as a corporation.—Art. 1506 of Regula-
3078 tions 45 is hereby amended to read as follows:

Art. 1506. Limited partnership as corporation.—On the other hand, limited partnerships of the type of partnerships with limited liability or partnership associations authorized by the statutes of Pennsylvania and of a few other States are only nominally partnerships. Such so-called limited partnerships, offering opportunity for limiting the liability of all the members, providing for the transferability of partnership shares, and capable of holding real estate and bringing suit in the common name, are more truly corporations than partnerships and must make returns of income and pay the tax as corporations. The income received by the members out of the earnings of such limited partnerships will be treated in their personal returns in the same manner as distributions on the stock of corporations. In all doubtful cases limited partnerships will be treated as corporations unless they submit satisfactory proof that they are not in effect so organized. A Michigan * partnership association is a corporation. Such a corporation may or may not be a personal service corporation. See Sections 200 [¶1308] and 218 [¶1305] of the statute and Articles 1523–1532 [beginning at ¶3083]. (T. D. 2943, signed by Commissioner Daniel C. Roper, and dated November 6, 1919.)

* [Virginia partnership associations, also, were held to be corporations by the article as originally promulgated.]

(Decision.)

(Revenue Act of 1916.)

(November 3, 1919.)

Depletion allowance in the case of operating lessees of mines.

Mohawk Mining Company vs. Harry H. Weiss, Collector.

(United States District Court for the Northern District of Ohio, Eastern Division.)

MEMORANDUM

3635 Westenhaver, District Judge: Plaintiff brings this action to recover
* income tax paid under protest. The parties have by stipulation in writing waived a jury and submitted their case for decision by me upon an agreed statement of facts.

3636 Plaintiff is the owner of a Minnesota mining lease on iron ore property acquired prior to March 1, 1913, conferring a right to mine and remove all of the ore and requiring the payment of 25 cents a ton royalty on such ore mined and moved. The question of law presented for decision is whether or not the plaintiff is entitled to deduct a reasonable allowance for depletion of iron ore from the gross amount of its receipts from all sources in order to determine the net income subject to tax. The answer to this question turns on the true meaning of Section 12 of the Revenue Act of September 18, 1916. The Government's contention is that the deduction authorized by the second subdivision of this section is allowable only to an operating owner of an ore mine and not to an operating lessee under a lease of the character stated.

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* Comment: The present Act makes provision for the equitable apportionment of depletion and depreciation between lessees and lessors, ¶2171.

3637 I have carefully examined all of the cases decided under the corporation tax act of 1909 and under the several income tax acts and have also carefully studied the several provisions of these several acts so far as they relate to this question. My conclusion is that the operating lessee is entitled to the deduction as claimed. My engagements are such that it would be impossible for me, without neglecting other work, to prepare and file an extended opinion setting forth my reasons for this conclusion earlier than the latter part of December. There are, however, no disputed questions of fact, and the question of law is so clear-cut and simple, that an entended written opinion would add nothing to the information of counsel. It is sufficient to say that I concur in the reasoning of plaintiff's brief, particularly its reply brief, and disagree wholly with the reasoning o the brief of defendant.

3638 Judgment will be rendered for plaintiff in accordance with the prayer of its petition. An exception will be noted on behalf of defendant.

D. C. WESTENHAVER,
Judge.

CLEVELAND, OHIO, November 3, 1919.

(T. D. 2944.)

Southern Pacific R. R. Co. v. Muenter (C. C. A. Oct. 6, 1919).

Deduction under Section 38, Act of August 5, 1909, of discount on bonds sold.

Where a corporation sold bonds at a discount during 1906, 1907, and 1908 no deduction from gross income for the years 1909, 1910, and 1911 of sums set aside by the corporation to pay such discount at the maturity of the bonds is permitted under the provisions of Section 38, Act of August 5, 1909, authorizing corporations to deduct from gross income "(second) all losses actually sustained within the year * * *" and "(third) interest actually paid within the year on its bonded or other indebtedness * * *." Baldwin Locomotive Works v. McCoach, 221 Fed. 59 explained [¶2078].

3639 The appended decision of the United States Circuit Court of Appeals
2072 for the Ninth Circuit in the case of Southern Pacific Railroad
3203a Company v. Muenter, is published not as a ruling of the Treasury Department, but for the information of internal-revenue officers and others concerned. (T. D. 2944, signed by Commissioner Daniel C. Roper, and dated November 8, 1919.)

In the United States Circuit Court of Appeals for the Ninth Circuit.
No. 3286 and 3287, Term, 1919.

Southern Pacific Railroad Company, a corporation, plaintiff in error, v. August E. Muenter, formerly collector of internal revenue, et al., defendants in error.

(In error to the United States District Court for the Northern District of California.)

3640 Before GILBERT, ROSS, and HUNT, Circuit Judges.

GILBERT, Circuit Judge: The court below sustained a demurrer to the complaint brought by the plaintiff in error to recover certain items of corporation income tax paid under protest upon its net income for the

years 1909, 1910 and 1911. The complaint alleged that during the years 1906, 1907, 1908 the plaintiff in error borrowed various sums of money, and as security therefor issued and sold interest-bearing bonds of the par value of $1,000, drawing interest at 4% per annum, and maturing on the first day of January, 1955, which bonds it was necessary to sell at a discount. The amount involved in the action is the sum of $1,392.22, income tax upon reserved sums of money which the plaintiff in error had set aside as the pro rata amount of the discount for the years in question distributed over the entire period until the maturity of the bonds, the plaintiff in error contending that the discount is to be regarded as a portion of the interest which it pays upon the loans. The question presented is whether or not money so reserved and set aside by book entries to meet the final payment of the discount could be deducted from net income of the corporation under the Income Tax Law of 1909, 36 Stat. 102, Sec. 38. That act, so far as it pertains to this question, provides that the net income upon which the tax is to be assessed is ascertained by deducting from the gross income, (second) all losses actually sustained within the year and not compensated by insurance or otherwise,(third) interest actually paid within the year on its bonded or other indebtedness. The plaintiff in error refers to Baldwin Locomotive Works v. McCoach, 215 Fed. 967, and the same case on appeal, 221 Fed. 59, as sustaining its contention. In that case the bonds were 31-year bonds, and the assessor thought it proper to deduct 1-31 of the total discount from the gross income of each taxable year. The controverted question in the case, however, was whether or not the corporation could deduct for the year 1910 the total discount upon the bonds which they had sold at 5% discount. The court held that a book charge because of the sale of an issue of bonds at less than par is not a part of the "expenses actually paid within the year out of income" so as to be deducted from gross income. There was no discussion of the question whether 1-31 part of the total discount deducted for the year had been deducted lawfully, as that deduction was not involved in the controversy. We think the present case is determined adversely to the plaintiff in error by the plain language of the statute. The money set apart upon the books each year until the maturity of the bonds to meet the loss which came from selling the bonds below par was the application of a prudent and proper system of business, and was a wise provision for the future, but it was not the payment of interest, nor did it represent a loss actually sustained within the year. The money was not in fact paid out. Notwithstanding the books of the plaintiff in error the money is still in its possession and subject to its control. A system of bookkeeping will not justify the Government in claiming taxes, nor will it justify the taxpayer in claiming exemption from taxation. The facts must control. Baldwin Locomotive Works v. McCoach, 221 Fed. 59, Mitchell Bros. v. Doyle, 225 Fed. 437.

3641 The judgment is affirmed.

3642 **Proceeds of insurance policies paid to partnerships on death**
945 **of the insured are exempt.**—Receipt is acknowledged of your
2864 letter dated October 30, 1919, relative to the meaning of Article 72 [¶2864] of Regulations 45.

3643 You call attention to the fact that Article 72 of the preliminary edition of Regulations 45 provided that "upon the death of an

insured the proceeds of his life insurance policies, whether paid to his estate or to individual beneficiaries (but not if paid to a corporation or partnership), are excluded from the gross income of the beneficiary" and that the same provision is contained in Article 72 of the final edition of the regulations, with the exception of the clause "(but not if paid to a corporation or partnership)" being omitted and the words "directly or in trust" substituted therefor. You also point out that Article 541 [¶3201] of the regulations establishes the status of the proceeds of life insurance policies paid upon the death of the insured to corporation beneficiaries, but that nowhere in the regulations is a definite statement to the effect that such proceeds paid to a partnership are or are not to be reported in the gross income of the partnership. You ask whether, under the circumstances, the term "individual beneficiaries" as used in Article 72 of the final edition of Regulations 45 also means partnership beneficiaries.

3644 In reply, you are advised that paragraph (1) of Section 213(b) of the Revenue Act of 1918 specifically provides that the term "gross income" does not include the proceeds of life insurance policies paid upon the death of the insured to individual beneficiaries or to the estates of the insured. Section 218 of the Act provides that in computing the net income of each member of a partnership "there shall be included his distributive share, whether distributed or not, of the net income of the partnership for the taxable year. * * * The net income of the partnership shall be computed in the same manner and on the same basis as provided in Section 212, except that the deduction provided in paragraph (11) of subdivision (a) of Section 214 shall not be allowed." In Section 212 it is specified "that the term 'net income' means the gross income as defined in Section 213, less the deductions allowed by Section 214." These provisions of the Revenue Act of 1918 do not require that the proceeds of life insurance policies paid upon the death of the insured to a partnership be reported in the gross income of the partnership. In other words, the phrase "individual beneficiaries" as used in that Act is held to include partnership beneficiaries. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated November 18, 1919.)

(T. D. 2951.)

3645 Verification of returns.—Article 406 of Regulations 45 is hereby
3017 amended [the matter in italics being new] to read as follows:

"**Art. 406. Verification of returns.** All income tax returns must be verified under oath or affirmation, *before an officer duly authorized to administer oaths either by the laws of the United States or by the laws of the state or territory where such officer resides.* Persons in the naval or military service of the United States may verify their returns before any official authorized to administer oaths for the purposes of those services. Income tax returns executed abroad may be attested free of charge before United States consular officers. Where a foreign notary or other official having no seal shall act as attesting officer, the authority of such attesting officer should be certified to by some judicial official or other proper officer having knowledge of the appointment and official character of the attesting officer." (T. D. 2951, signed by Commissioner Daniel C. Roper, and dated November 19, 1919.)

(T. D. 2952.)

United States v. Benowitz (District Court of N. Y., Oct. 20, 1919)

Income tax returns—Authority to administer oaths.—A commissioner of deeds is authorized by Section [Article] 406, Regulations 45, Treasury Department, to administer an oath to an income tax return and where such oath is false an indictment for perjury will lie under Section 125 of the Criminal Code of the United States.

3646 The appended decision of the United States District Court for the
3017 Southern District of New York in the case of the United States of
3645 America v. Hyman Benowitz, is published not as a ruling of the Treasury Department, but for the information of internal-revenue officers and others concerned. (T. D. 2952, signed by Commissioner Daniel C. Roper, and dated November 19, 1919.)

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

(Decided October 20, 1919.)

The United States of America v. Hyman Benowitz.

(On demurrer to an indictment for perjury under Section 125 of the Criminal Code. The indictment charged that the defendant had committed perjury by falsely swearing to an income tax return before a commissioner of deeds of the City of New York.)

3647 HAND, J. D.: It must be conceded that since U. S. v. Curtis, 107 U. S. 671 and U. S. v. Hall, 131 U. S. 50, the crime charged in the first count must stand or fall solely upon whether Section 406 of the Regulations under the Income Tax Law authorized commissioners of deeds to take oaths to income tax returns, U. S. v. Morehead, 243 U. S. 608, or whether under Mr. Justice Story's dictum in U. S. v. Bailey, 9 Pet. 238, 253, 257, the oath was taken before such an official "in conformity with the practice and usage of the treasury department."

3648 Section [Article] 406 begins by the bare statement that all returns must be verified on oath, in that respect merely repeating the statute. Yet it very clearly intended—though it must be confessed it is very blindly worded—to cover the whole matter, because it at once proceeds to particulars, providing that soldiers and sailors may take oaths before anyone generally authorized to administer oaths to soldiers and sailors and that persons abroad may go to consular officers. It is of course absurd to suppose that the section taken as a whole meant to say that only such officers might administer oaths. If so, no one not only need, but no one even could verify his return unless it were soldiers and sailors and persons abroad. This would repeal the statute in substance; indeed such a regulation would be illegal.

3649 Finally, the section concludes with a provision for the certification of oaths taken by "a foreign notary or other official having no seal." This of course directly implies that foreign notaries may take such oaths, and that there are also officials so authorized who have no seals other than they. It is perfectly apparent from this language that those who drafted the section must have supposed that the first sentence authorized some officers to take oaths, for the last sentence from which the question was taken would be without any conceivable meaning if they did not, just as the second and third sentences, while logically possible, would be absurd

and indeed invalid in law. If so, the only question is as to what officers the scriveners of the section must have meant. Much the most rational, and, so far as I can see, the only possible, interpretation is that they meant to include all such as were authorized by the local law to take oaths in their several districts. If I do not so interpret the language, I must suppose that the regulation which was meant to put the statute into effect illegally defeated it by applying it in a whimsically capricious way. I interpret the regulation, therefore, as intended to allow a commissioner of deeds among other officials to take such an oath.

3650 It becomes unnecessary, therefore, to consider the effect of Justice Story's dictum in U. S. v. Bailey, supra.

The second count is concededly good if the first is.

Demurrer overruled. [Opinion appended to T. D. 2952, ¶3646.

3651 The filing of Form 1000 by personal service corporations in
2999 **collecting interest on tax-free-covenant bond interest.**—

Reference is made to your letter, dated October 8, 1919 which is quoted here: "While the Revenue act of 1918 treats a personal service corporation similar to a partnership, no provision seems to have been made to allow a personal service corporation to take advantage of the tax-free clause when collecting coupons from bonds. We inquire if a personal service corporation may alter Certificate Form 1000 when collecting coupons from tax-free covenant obligations." ¶In reply you are advised that personal service corporations are to be treated, so far as practicable, on the same basis as partnerships for the purposes of withholding under Section 221 (b) of the Revenue Act of 1918. Corporations which have received notice from the Income Tax Unit that their returns as personal service corporations have been approved may thereafter, and not before, issue Form 1000 in collecting interest from bonds or other obligations of a corporation containing a so-called tax-free covenant clause in the same manner as and to the same extent that partnerships are authorized to use that form. The form should bear the stamped or written notation "Approved by the Treasury Department as Personal Service Corporation on (blank date)". (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated November 20, 1919.)

3652 Amended returns and refunds for years prior to 1914.—
2497 Receipt is acknowledged of your letter of September 8, 1919, with reference to the question of refund in the case of your client, the .....Company, ..., Wisconsin, whose invested capital has been reduced in order to provide for depreciation which had not been deducted during the years 1909 to 1917, inclusive. You state that a letter addressed to the company by the Revenue Agent in charge, on August 15, contained the following paragraph:

> "On account of the limitation contained in the Revenue Act of 1918, no refund is allowable for any year prior to 1914. For this reason it will be useless for you to file amended returns for years prior to 1914."

You question the statement made therein and refer to Sections 3220 [¶2497] and 3228 [¶2615] of the Revised Statutes in support of your contention that the company should be entitled to file amended returns for 1909 and all subsequent years. ¶In reply, you are advised that the statement of the Revenue Agent is erroneous.

3653 The five-year limitation on assessment and suit contained in Sec-
2360 tion 250 (d) [¶2360] applies only to taxes due under the Revenue Act of 1918.

3654 Section 252 [¶2488] does not operate so as to take away the rights
2488 which a taxpayer has under Section 3228, Revised Statutes [¶2615],
2615 to file a claim for refund whithin two years after the time the cause of action accrued. ¶The five-year limitation in Section 252 does not apply to claims for abatement. (Letter to Ernst and Ernst, Washington, D. C., signed by Commissioner Daniel C. Roper, and dated October 9, 1919.)

(T. D. 2956.)

3655 Deductions allowed-Depletion after discovery of Oil and
2948 **Gas wells. Proven tract or lease. Disproportionate value,**
2949 **Articles 220 and 221 of Regulations 45, amended.**—Regulations 45 are hereby amended by substituting for Articles 220 and 221 as they now stand the following three articles:

3656 Art. 220. Oil and Gas Wells. Section 214 (a) (10) and Section
2948 234 (a) (9) provide that taxpayers who discover oil and gas wells on or after March 1, 1913, may, under the circumstances therein prescribed, determine the fair market value of such property at the date of discovery or within 30 days thereafter for the purpose of ascertaining allowable deductions for depletion. Before such valuation may be made the statute requires that two conditions precedent be satisfied, (1) that the fair market value of such property (oil and gas wells) on the date of discovery or within 30 days thereafter became materially disproportionate to the cost, by virtue of the discovery, and (2) that such oil and gas wells were not acquired as the result of purchase of a proven tract or lease.

3657 Art. 220 (a). Discovery - Proven Tract or Lease - Property Disproportionate Value. (1) For the purpose of these sections of the Revenue Act of 1918, an oil or gas well may be said to be discovered when there is either a natural exposure of oil or gas, or a drilling that discloses the actual and physical presence of oil or gas in quantities sufficient to justify commercial exploitation. Quantities sufficient to justify commercial exploitation are deemed to exist when the quantity and quality of the oil or gas so recovered from the well are such as to afford a reasonable

expectation of at least returning the capital invested in such well through the sale of the oil or gas, or both, to be derived therefrom.

3658 (2) A proven tract or lease may be a part or the whole of a proven area. A proven area for the purposes of this statute shall be presumed to be that portion of the productive sand or zone or reservoir included in a square surface area of 160 acres having as its center the mouth of a well producing oil or gas in commercial quantities. In other words, a producing well shall be presumed to prove that portion of a given sand, zone or reservoir which is included in an area of 160 acres of land, **regardless of private boundaries.** The center of such square area shall be the mouth of the well, and its sides shall be parallel to the section lines established by the United States system of public land surveys in the district in which it is located. Where a district is not covered by the United States Land surveys, the sides of said area shall run north and south, east and west.

3659 So much of a taxpayer's tract or lease which lies within an area proven either by himself or by another is "a proven tract of lease" as contemplated by the statute, and the discovery of a well thereon will not entitle such taxpayer to revalue such well for the purpose of depletion allowances, unless the tract or lease had been acquired before it became proven. And even though a well is brought in on a tract or lease not included in a proven area as heretofore defined, nevertheless it may not entitle the owner of the tract or lease in which such well is located to revaluation for depletion purposes, if such tract or lease lies within a compact area which is immediately surrounded by proven land, and the geologic structural conditions on or under the land so inclosed may reasonably warrant the belief that the oil or gas of the proven areas extends thereunder. Under such circumstances the entire area is to be regarded as proven land.

3660 (3) The "property" which may be valued after discovery is the "well". For the purposes of these sections the "well" is the drill hole, the surface necessary for the drilling and operation of the well, the oil or gas content of the particular sand, zone or reservoir (limestone, breccia, crevice, etc.) in which the discovery was made by the drilling and from which the production is drawn, to the limit of the taxpayer's private bounding lines, but not beyond the limits of the proven area as heretofore provided.

3661 (4) A taxpayer to be entitled to revalue his property after March 1, 1913, for the purpose of depletion allowances must make a discovery after said date and such discovery must result in the fair market value of the property becoming disproportionate to the cost. The fair market value of the property will be deemed to have become disproportionate to the cost when the output of such well of oil or gas affords a reasonable expectation of returning to the taxpayer an amount materially in excess of the cost of the land or lease if acquired since March 1, 1913, or its fair market value on March 1, 1913, if acquired prior thereto, plus the cost of exploration and development work to the time the well was brought in.

3662 Art. 221. Proof of discovery of oil and gas wells. In order to meet the requirements of the preceding article to the satisfaction of the Commissioner the taxpayer will be required, among other things, to submit the following with his return: (a) a map of convenient scale, showing the location of the tract and discovery well in question and of the

2945

nearest producing well, and the development for a radius of at least three miles from the tract in question, both on the date of discovery and on the date when the fair market value was set; (b) a certified copy of the log of the discovery well, showing the location, the date drilling began, the date of completion and beginning of production, the formations penetrated, the oil, gas and water sands penetrated, the casing record, including the record of perforations, and any other information tending to show the condition of the well and the location of the sand or zone from which the oil or gas is produced on the date the discovery was claimed; (c) a sworn record of production, clearly proving the commercial productivity of the discovery well; (d) a sworn copy of the records, showing the cost of the property; and (e) a full explanation of the method of determining the value on the date of discovery or within 30 days thereafter, supported by satisfactory evidence of the fairness of this value. (T. D. 2956, signed by Commissioner Daniel C. Roper, and dated December 2, 1919.)

3663 **Re method of computing tax in the case of fiscal year**
3121 **corporations.**—Reference is made to your letter dated October 27, 1919, addressed to the Chairman of Committee on Appeals and Review, and by him referred to this office for reply, after full consideration had been given to the subject matter contained therein. ¶In reply you are advised that the questions presented were carefully considered before the regulations were issued or the forms were drafted, and have since that time been the subject of most thoughtful consideration and analysis. The view of the Department is expressed in the regulations and the forms now in use. ¶The Bureau, therefore, does not deem it advisable to modify the regulations or to make any change in the forms until such time as it may be required to do so by a court decision. (Letter to K. Sheridan Hayes, Washington, D. C., signed by Commissioner Daniel C. Roper, and dated November 5, 1919.)

COMMENT

The regulations in the body of the book, on pages 55 to 300, consist in the main of the Treasury Decisions (T. D.'s) issued by the Treasury Department through the office of the Commissioner of Internal Revenue from the time of the approval of the original Income Tax Law, Act of October 3, 1913, up to and including February 12, 1919. In addition are given court decisions and numerous letters and extracts from letters emanating from the office of the Commissioner of Internal Revenue, most of which were embodied in The Corporation Trust Company's Income Tax Service for 1914, for 1915, for 1916, for 1917, or for 1918.

At this writing (February 18, 1919), the regulations based on the Revenue Act of 1918, have not been issued by the Treasury Department.

Therefore, we have included most of the old regulations which have not been specifically repealed or superseded, even though some of these contain statements inconsistent with the changed provisions of the law.

As indicated on page 4, the Income Tax Law is reprinted, beginning on page 55, having its paragraphs numbered to correspond with the numbering of the paragraphs of the law as printed as a unit beginning on page 5. On the succeeding pages all regulations explaining, enlarging, or giving specific directions for the enforcement of the law provisions in a particular paragraph or group of paragraphs of the law are printed immediately following such law paragraph or group of paragraphs.

A generous employment of titles to subjects and sub-subjects throughout the book will facilitate its use.

Following each regulation provision is a citation to its source, and the date thereof and on Supplementary Page 106, following, is printed a list of all sources arranged numerically by T. D. number, by article number in the general Regulations No. 33 of January 5, 1914, by article and paragraph number of Regulations No. 33, Revised, January 2, 1918, by dates of letters and other special matters, showing at what paragraphs these sources appear in this, our 1919 service.

Each of the paragraphs reprinted in the Service contained in the government's several extensive compilations has been listed in the "T. D. and Special Matter Finder" (beginning with T. D. 2090 on Supplementary Page 107) with a very brief summary of paragraph content.

General Regulations No. 33 of January 5, 1914, and, in turn, Regulations No. 33, Revised, January 2, 1918, repeated exactly, much of the regulations issued previous to the respective dates of issue. In such cases we have eliminated the earlier rulings. Other exact duplications, definite repealings and revocations, and specific amendments have been similarly handled. Matter applicable solely to the collection of the tax for prior years has not been included.

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TREASURY DEPARTMENT,
U. S. INTERNAL REVENUE.
Form 46—Revised March, 1918.
Ed. 150,000.

CLAIM FOR REFUND.

TAXES ERRONEOUSLY OR ILLEGALLY COLLECTED.

ALSO AMOUNTS PAID FOR STAMPS USED IN ERROR OR EXCESS.

Date of filing to be plainly stamped here

State of .....
County of ..... } *SS:*

IMPORTANT.
This claim should be forwarded to the Collector of Internal Revenue to whom the Tax was paid and must be accompanied by Collector's Receipt therefor.

Write Name so it can be easily read.

.....
(Name of claimant.)

.....
(Address of claimant; give street and number as well as city or town, and State.)

This deponent being duly sworn according to law deposes and says that this claim is made on behalf of the claimant named above, and that the facts stated below with reference to the claim are true and complete:

1. Business engaged in by claimant .....

2. Character of assessment or tax .....
(State for or upon what the tax was assessed or the stamps affixed.)

3. Amount of assessment or stamps..... $.....

4. Amount now asked to be refunded (or such greater amount as is legally refundable)..... $.....

5. Date of payment of assessment or purchase of stamps .....

Deponent verily believes that the amount stated in Item 4 should be refunded and claimant now asks and demands refund of said amount for the following reasons:

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And this deponent further alleges that the said claimant is not indebted to the United States in any amount whatever, and that no claim has heretofore been presented, except as stated herein, for the refunding of the whole or any part of the amount stated in Item 3.

Sworn to and subscribed before me this..... Signed:

day of ....., *19*.....

Write Name so it can be easily read.

.....
(Name.) (Title.)

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue without charge.)

CERTIFICATES.

I certify that an examination of the records of the Commissioner's Office shows the following facts as to the assessment and payment of the tax:

Name of taxpayer.	Character of assessment and period covered.	List.	Year.	Month.	Page.	Line.	Amount.	Date paid.	District in which paid.
							$		

Assessment Clerk, Internal Revenue Bureau.

I certify that the records of my office show the following facts as to the purchase of stamps:

To whom sold or issued.	Kind.	Number.	Denomination.	Date of sale or issue.	Amount.	If special tax stamp, state:	
						Serial number.	Period commencing—
					$		

Collector.....*District*.....

Form 46.

Schedule Number ..... District .....

Allowed or Rejected Number..... .....
(Nature of tax.)

Claimant.....

Address .....

Examined and submitted for action....., 19.....

Claim examined by—
Claim approved by—
Chief of Division.

COMMITTEE ON CLAIMS.

Amount claimed.... $..... .....

Amount allowed.... $..... .....

Amount rejected.... $..... .....

TREASURY DEPARTMENT,
U. S. INTERNAL REVENUE.
Form 37.—Revised April, 1918.
Ed. 300,000.

CLAIM FOR ABATEMENT

TAXES ERRONEOUSLY OR ILLEGALLY ASSESSED

DATE OF FILING TO BE PLAINLY STAMPED HERE

State of .....
County of ..... } *ss:*

IMPORTANT
This claim should be forwarded to the Collector of Internal Revenue from whom notice of assessment was received.

Write Name so it can be easily read.

.....
(Name of claimant.)

.....
(Address of claimant; give street and number as well as city or town, and State.)

This deponent being duly sworn according to law, deposes and says that this claim is made on behalf of the claimant named above, and that the facts stated below with reference to said claim are true and complete:

1. Business engaged in by claimant .....
2. Character of assessment or tax .....
3. Amount of assessment ..... $.....
4. Amount now asked to be abated ..... $.....

Deponent verily believes that the amount stated in item 4 should be abated, and claimant now asks and demands abatement of said amount for the following reasons:

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Sworn to and subscribed before me this

..... day of ....., 19.....

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.....
(Title.)

Signed:

Write Name so it can be easily read.

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(This affidavit may be sworn to before a Deputy Collector of Internal Revenue without charge.)

3—0664

CERTIFICATE OF ASSESSMENT

I certify that an examination of the records of the Commissioner's Office shows the following facts as to the assessment and payment of the tax:

NAME AND ADDRESS.	CHARACTER OF ASSESSMENT OR ARTICLE TAXED.	PERIOD COVERED BY ASSESSMENT.	LIST.	YEAR.	MONTH.	PAGE.	LINE.	AMOUNT.

Assessment Clerk, Internal Revenue Bureau.

Form 47

District .....

Abatement Order No. .....

.....
(Nature of tax.)

Claimant .....

Address .....

Examined and submitted for action ....., *19*.....

Claim examined by--
.....
Claim approved by--
.....
Chief of Division.

Amount claimed, $.....

Amount allowed, $.....

Amount rejected, $.....

COMMITTEE ON CLAIMS:

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.....

.....

7—6634

ORIGINAL

THIS FORM WITH DUPLICATE AND REMITTANCE COVERING ONE-FOURTH OF ESTIMATED TAX MUST REACH THE COLLECTOR'S OFFICE ON OR BEFORE MARCH 15, 1919.

Form 1031 T—UNITED STATES INTERNAL REVENUE SERVICE

TENTATIVE RETURN AND ESTIMATE OF CORPORATION INCOME AND PROFITS TAXES AND REQUEST FOR EXTENSION OF TIME FOR FILING RETURN

PRINT BELOW TAXPAYER'S NAME AND PRINCIPAL PLACE OF BUSINESS

Do not write in this space

AMOUNT PAID

$.....

(Cashier's Stamp)

Check or draft	
Money order	
Currency or coin	
Certificate of indebtedness	

Date..... (To be entered by taxpayer.) No ..... (To be entered by Collector)

Collector of Internal Revenue,

.....

The amount stated below is remitted herewith in payment of not less than one-fourth of the estimated amount of the income, war-profits, and excess-profits taxes for the year ended ..... of the corporation whose name and address appear at the head of this form.

An extension of ..... days in the time allowed for filing a completed return is requested.

It is not possible to file a completed return on or before March 15, 1919, for the following reasons:

.....

.....

.....

NOTE.—A parent company may make a tentative return and pay the first installment of the tax on behalf of all its subsidiaries without apportioning the tax among them until the completed return is filed.

Estimated amount of tax..... $.....

Amount of remittance herewith:

Check or draft.	Money order.	Currency or coin	Certificates of indebtedness	Total
$.....	$.....	$.....	$.....	$.....

AFFIDAVIT

The undersigned, president and treasurer, respectively, of the corporation whose name and address appear at the head of this form, being severally duly sworn, each for himself deposes and says that the foregoing is a fair estimate of the total amount of the income, war-profits, and excess-profits taxes of the said corporation for the period stated above, and that the above-stated reasons why a completed return can not be filed on or before March 15, 1919, are true.

Sworn to and subscribed before me } this ..... day of ....., 19.....

..... (President.)

..... (Name of officer.) ..... (Treasurer.)

..... (Official capacity.)

3—9401

[This Form 1031T—Duplicate (see Supplementary Page 7, for original) is attached to the original (perforated), the reverse of both sheets being blank.]

DUPLICATE
to be sent to Collector with original

THIS FORM DULY APPROVED BY THE COLLECTOR MUST ACCOMPANY THE TAXPAYER'S COMPLETED RETURN WHEN FILED

Form 1031 T—UNITED STATES INTERNAL REVENUE SERVICE

TENTATIVE RETURN AND ESTIMATE
OF
CORPORATION INCOME AND PROFITS TAXES
AND
REQUEST FOR EXTENSION OF TIME FOR FILING RETURN

PRINT BELOW TAXPAYER'S NAME AND PRINCIPAL PLACE OF BUSINESS

PENALTIES

For Making False or Fraudulent Return.

Not exceeding $10,000 or not exceeding one year's imprisonment, or both, in the discretion of the court, and, in addition, 50 per cent of the tax evaded.

For Failing to Make Return on Time.

Not more than $1,000, and, in addition, 25 per cent of the amount of tax due.

Date..... (To be entered by taxpayer.) No. ..... (To be entered by Collector.)

Collector of Internal Revenue,

.....

The amount stated below is remitted herewith in payment of not less than one-fourth of the estimated amount of the income, war-profits, and excess-profits taxes for the year ended ..... of the corporation whose name and address appear at the head of this form

An extension of ..... days in the time allowed for filing a completed return is requested.

It is not possible to file a completed return on or before March 15, 1919, for the following reasons:

.....

.....

.....

NOTE.—A parent company may make a tentative return and pay the first installment of the tax on behalf of all its subsidiaries without apportioning the tax among them until the completed return is filed.

Estimated amount of tax..... $.....

Amount of remittance herewith

Check or draft.	Money order	Currency or coin	Certificate of indebtedness	Total.
$.....	$.....	$.....	$.....	$.....

COLLECTOR'S APPROVAL

In consideration of the filing of this tentative return and the payment of not less than one-fourth of the estimated amount of the tax, and for the reasons stated above, the time for filing the completed return of the taxpayer whose name and address appear at the head of this form is hereby extended, by authority of the Commissioner of Internal Revenue, until .....

If the remittance accompanying this tentative return exceeds one-fourth of the tax as computed on the completed return, the excess will be credited against the balance remaining to be paid. If the remittance is less than one-fourth of the tax, the balance due, with interest at the rate of six per cent per annum from March 15, 1919, must accompany the completed return. If the amount paid exceeds the total tax as shown by the completed return, the excess will be refunded.

Date.....

.....
Collector of Internal Revenue.

2—8601

.....District of.....

RETURN OF INCOME TAXABLE AT 1918 RATES

A. INCOME FROM BUSINESS OR PROFESSION.

1. Kind of business ..... 2. Business address .....

3. Total sales and income from business or professional services ..... $

COST OF GOODS SOLD

4. Labor ..... $
5. Material and supplies .....
6. Merchandise bought for sale .....
7. Other costs (submit schedule of principal items at foot of page or on separate sheet) .....
8. Plus inventories at beginning of year .....
9. TOTAL ..... $
10. Less inventories at end of year .....
11. NET COST OF GOODS SOLD ..... $

OTHER BUSINESS DEDUCTIONS:

12. Salaries and wages not reported as "Labor" under "Cost of Goods Sold" ..... $
13. Rent .....
14. Interest on business indebtedness .....
15. Taxes on business and business property .....
16. Repairs, wear and tear, obsolescence, depletion, and property losses (explain in table below) .....
17. Bad debts arising from sales .....
18. Other expenses (submit schedule of principal items at foot of page or on separate sheet) .....
19. TOTAL OTHER BUSINESS DEDUCTIONS ..... $

20. NET COST OF GOODS SOLD PLUS OTHER BUSINESS DEDUCTIONS ..... $

21. NET INCOME FROM BUSINESS OR PROFESSION ..... $

B. INCOME FROM SALARIES, WAGES, COMMISSIONS, BONUSES, DIRECTOR'S FEES, AND PENSIONS.

1. Occupation.	2. Name and Address of Employer.	3. Gross Income.	4. Deductions, if any.
		$	$

NET INCOME FROM SALARIES, ETC. (total of column 3 minus total of column 4) ..... $

C. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND ESTATES AND TRUSTS (not including interest on tax-free covenant bonds received through fiduciaries, which should be included in Item F; dividends, which should be included in Item K(a); taxable interest on obligations of the U. S., which should be included in Item K(b), or income taxable at 1917 or prior-year rates—see table 14, page 1) ..... $

D. PROFIT FROM SALE OF LAND, BUILDINGS, STOCKS, BONDS, AND OTHER PROPERTY.

1. Kind of Property.	2. Year Acquired.	3. Name and Address of Purchaser or Broker.	4. Sale Price.	5. Original Cost or Market Value March 1, 1913.	6. Cost of Subsequent Improvements, if any.	7. Depreciation Subsequently Sustained.
			$	$	$	$

NET PROFIT FROM SALES (total of columns 4 and 7 minus total of columns 5 and 6) ..... $ ..... $ ..... $ ..... $ ..... $

E. INCOME FROM RENTS AND ROYALTIES.

1. Kind of Property.	2. Name and Address of Tenant, Lessee, Etc.	3. Amount of Rent and Royalties.	4. Repairs, Wear and Tear, Obsolescence, Depletion, and Property Losses.	5. Interest.	6. Taxes.	7. Other Expenses (Explain Below).

DELIVER OR SEND THIS RETURN TO COLLECTOR OF INTERNAL REVENUE ON OR BEFORE MARCH 15, 1919

DETACH AND KEEP WORK SHEET AND INSTRUCTION SHEET

Form 1040—UNITED STATES INTERNAL REVENUE SERVICE

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF MORE THAN $5,000
FOR CALENDAR YEAR 1918

If the return is made for a part of the calendar year 1918, the date on which the period covered by the return ends must be plainly stated at the head of the return.

PRINT NAME AND ADDRESS PLAINLY BELOW

(Name)

(Street and number or rural route)

(Post office and State)

CASH	
CHECK	
M. O.	
CERT. of IND.	

(DO NOT WRITE IN THIS SPACE)

Examined by

Audited by

FIRST PAYMENT

$

(Cashier's Stamp)

1. Did you make a return for 1917? 2. If so, what address did you give on that return?
3. To what Collector's office was it sent? (Give district or city and State.)
4. Give number, if any, assigned to you for 1917, if it does not appear in address at head of return
5. Were you in 1918 married and living with wife (or husband)? 6. If not, were you head of a family as defined in instructions under "Personal Exemption"?
7. How many dependent persons under 18 (or mentally or physically defective) received their chief support from you in 1918?
8. If you claim any additional exemption on account of dependent persons other than your children, what was their relationship to you?
9. Write "R" if this return shows income received or "A" if it shows income accrued
10. Did your wife (or husband) or minor child make a separate return? (If so, give name and address entered at head of that return.)

11. Enter below all **nontaxable income** received by (or accrued to) you during the year:

Class of Securities.	Principal.	Interest.	Class of Securities.	Principal.	Interest.	Salary, etc. (Give source).	Amount.
Bonds of First Liberty Loan unconverted	$	$	Obligations of States and Territories, political subdivisions thereof, and the District of Columbia	$	$		$
Other obligations of the U. S. issued before Sept. 1, 1917, and obligations of U. S. possessions			Federal Farm Loan Bonds				

12. State amount of **stock dividends** received by (or accrued to) you directly during the year, declared from earnings of domestic or resident corporations accumulated since February 28, 1913, and prior to January 1, 1918:
(a) Accumulated in 1917, $ (b) Accumulated in 1916, $ (c) Accumulated since February 28, 1913, and prior to January 1, 1916, $

13. Enter in table below **interest on Liberty Bonds** and other obligations of the United States issued since September 1, 1917, received by (or accrued to) you during the year, and maximum amount of such obligations (par value) held at any one time from which such interest was derived (see instructions, page 2, under K(b):

1. Class of Obligation.	Individual Holdings. 2. Amount of Interest.	3. Maximum Amount of Obligations.	Share of Holdings of Partnerships, Personal Service Corporations, and Estates and Trusts. 4. Amount of Interest.	5. Maximum Amount of Obligations.	6. Total of Columns 3 and 5.	7. Maximum Exemption.
(a) First Liberty Loan converted into Second Loan and Second Liberty Loan converted (interest received since January 1, 1918)	$	$	$	$	$	$45,000 (See Note.)
(b) First and Second Liberty Loans converted into Third Loan and Third Liberty Loan						
(c) First Liberty Loan converted into Fourth Loan						30,000
(d) Fourth Liberty Loan						30,000
(e) Other obligations issued since September 1, 1917						0
(f) Totals	$	$	$	$	$	

In addition an exemption of $5,000 may be claimed as to any one of these classes or may be divided among them.

Note.—This exemption (maximum $45,000) is limited to one and one-half times the amount of bonds of the Fourth Liberty Loan originally subscribed for and still held. State here amount of bonds of the Fourth Liberty Loan originally subscribed for and still held $

14. Enter in the table below **income from partnerships, personal service corporations, and estates and trusts:**

1. Name of Partnership, Personal Service Corporation, Estate, or Trust. (If Estate or Trust, give also Name of Fiduciary.)	2. Period (Enter 1918 or Date on which Fiscal Year Ended).	3. Cash Dividends.	4. Stock Dividends.	5. Interest on Tax-Free Bonds (From States and Trusts only).	6. Interest on Liberty Bonds, etc., Issued Since Sept. 1, 1917.	7. Other Income.	8. Total.
(a) Totals taxable at 1918 rates (see instructions, page 2, under C)		Include in E(a), page 2 $	Include in E(a), page 2 $	Include in F, page 2 $	See instructions, page 2, under K(b). $	Enter at C, page 2. $ Enter as 30, below.	X X X X Enter as 37, below. $
(b) Totals taxable at 1917 rates (see instructions, page 2, under C)		$	$	X X X X	$	$	$

(c) Amount of stock dividends (column 4) taxable at 1918 rates (enter as 20), $ (d) Amount of stock dividends taxable at 1913–15 rates (enter as 25), $

Total Net Income Subject to Surtax.		Total Net Income Subject to Normal Tax.		Calculation of Tax.	
15. Item I, page 2	$	AT 1918 RATES.		33. Normal tax of 6% on amount of Item 28	$
16. Item 12 (a)		25. Net income shown on page 2, Item J	$	34. Normal tax of 12% on amount of Item 29	
17. Item 14 (b), column 8		26. Less personal exemption		35. Normal tax of 4% on amount of Item 32	
18. Total (Items 15, 16, and 17)	$	27. Balance	$	36. Surtax at 1918 rates (see surtax table on page 1 of instructions)	
19. Item 12 (b)		28. Amount subject to tax at 6% (not over $4,000)		37. Surtax at prior-year rates (see surtax table on page 1 of instructions)	
20. Item 14 (c)		29. Balance subject to tax at 12%	$	38. Total tax	$
21. Total (Items 18, 19, and 20)	$	AT 1917 RATES.		39. Tax paid at source (2% of amount of Item F, page 1)	
22. Item 12 (c)		30. Amount of Item 14 (b), column 7	$	40. Income, war profits, and excess-profits taxes paid in 1918 to foreign countries and possessions of the U. S.	
23. Item 14 (d)		31. Balance of personal exemption not used above (Item 26 minus Item 25)		41. Balance of tax due (Item 38 minus Items 39 and 40)	$
24. Total net income (Items 21, 22, and 23)	$	32. Balance subject to tax at 4%	$	42. Amount of tax paid on submission of return	$

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me and, to the best of my knowledge and belief, is a true and complete return in good faith, pursuant to the income tax law and regulations, of all taxable gains, profits, and income received by or accrued to me (or the person for whom this return is made) during the year 1918, and that all deductions entered or claimed herein are allowable by law.

(If return is made by agent, the reason therefor must be stated on this line)

Sworn to and subscribed before me this day of , 1919.

(Signature of individual or agent)

(Signature of officer administering oath) (Title) (Address of individual or agent)

DETACH RETURN HERE AND SEND IT TO COLLECTOR OF INTERNAL REVENUE

Income Tax Supplementary Page 9

Income Tax Supplementary Page 9

RETURN OF INCOME TAXABLE AT 1918 RATES

A. INCOME FROM BUSINESS OR PROFESSION.

1. Kind of business ..... 2. Business address .....

3. Total sales and income from business or professional services ..... $

COST OF GOODS SOLD

4. Labor ..... $
5. Material and supplies .....
6. Merchandise bought for sale .....
7. Other costs (submit schedule of principal items at foot of page or on separate sheet) .....
8. Plus inventories at beginning of year .....
9. Total ..... $
10. Less inventories at end of year .....
11. Net Cost of Goods Sold ..... $

OTHER BUSINESS DEDUCTIONS:

12. Salaries and wages not reported as "Labor" under "Cost of Goods Sold" ..... $
13. Rent .....
14. Interest on business indebtedness .....
15. Taxes on business and business property .....
16. Repairs, wear and tear, obsolescence, depletion, and property losses (explain in table below) .....
17. Bad debts arising from sales .....
18. Other expenses (submit schedule of principal items at foot of page or on separate sheet) .....
19. Total Other Business Deductions ..... $

20. Net Cost of Goods Sold Plus Other Business Deductions ..... $

21. Net Income from Business or Profession ..... $

B. INCOME FROM SALARIES, WAGES, COMMISSIONS, BONUSES, DIRECTOR'S FEES, AND PENSIONS.

1. Occupation.	2. Name and Address of Employer.	3. Gross Income.	4. Deductions, if any.
		$	$
Net Income from Salaries, etc. (total of column 3 minus total of column 4)		$	$

$

C. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND ESTATES AND TRUSTS (not including interest on tax-free covenant bonds received through fiduciaries, which should be included in Item F; dividends, which should be included in Item K(a); taxable interest on obligations of the U. S., which should be included in Item K(b), or income taxable at 1917 or prior-year rates—see table 14, page 1) ..... $

D. PROFIT FROM SALE OF LAND, BUILDINGS, STOCKS, BONDS, AND OTHER PROPERTY.

1. Kind of Property.	2. Year Acquired.	3. Name and Address of Purchaser or Broker.	4. Sale Price.	5. Original Cost or Market Value March 1, 1913.	6. Cost of Subsequent Improvements, if any.	7. Depreciation Subsequently Sustained.
			$	$	$	$
Net Profit from Sales (total of columns 4 and 7 minus total of columns 5 and 6)			$	$	$	$

$

E. INCOME FROM RENTS AND ROYALTIES.

1. Kind of Property.	2. Name and Address of Tenant, Lessee, Etc.	3. Amount of Rent and Royalties.	4. Repairs, Wear and Tear, Obsolescence, Depletion, and Property Losses.	5. Interest.	6. Taxes.	7. Other Expenses (Explain Below).
		$	$	$	$	$
Net Income from Rents and Royalties (total of column 3 minus total of columns 4, 5, 6, and 7)		$	$	$	$	$

$

F. INTEREST ON CORPORATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH A TAX OF 2% WAS PAID BY DEBTOR CORPORATION (including such interest received through fiduciaries) ..... $

G. OTHER INCOME (not including dividends, or interest on obligations of the United States).

	1. Gross Income.	2. Deductions, if any.
1. Interest on bonds, mortgages, and other obligations of domestic and resident corporations except as reported in Item F	$	$
2. Interest on bonds of foreign countries and corporations and dividends on stock of foreign corporations		
3. Interest on bank deposits, mortgages, etc.		
4.		
5.		
Net Total (total of column 1 minus total of column 2)	$	$

$

H. TOTAL NET INCOME FROM ABOVE SOURCES ..... $

I. GENERAL DEDUCTIONS NOT INCLUDED ABOVE.

1. Interest paid or accrued ..... $
2. Taxes paid or accrued .....
3. Losses by fire, storm, etc. (explain in table below) ..... $
4. Contributions (explain below) .....
5. Other deductions, if any (explain below) ..... $

Total ..... $

J. Total net income on which normal tax is to be calculated at 1918 rates (H minus I) (enter as 25, page 1) ..... $

K(a). Dividends on stock of corporations organized or doing business in the United States (not including income from personal service corporations):

Received directly, $..... ; received through partnerships, personal service corporations, and fiduciaries, $..... Total ..... $

K(b). Taxable interest on bonds and other obligations of the United States issued after September 1, 1917 (see instructions, page 2) .....

L. Total net income subject to surtax at 1918 rates (if this amount is $5,000 or less, make your return on Form 1040A, unless you had income taxable at 1917 or prior-year rates) ..... $

ENTER IN THIS TABLE DETAILS CONCERNING REPAIRS, WEAR AND TEAR, PROPERTY LOSSES, ETC., CLAIMED AS DEDUCTIONS IN SCHEDULES A, E, AND I ABOVE.

1. Refer. to Sch. A, E, or I.	2. Kind of Property (if Buildings, State also Material of which Constructed).	3. Year Acquired.	4. Cost of Property (or Market Value March 1, 1913).	5. Repairs (not Offset by Claims for Wear and Tear and Losses).	Wear and Tear, Obsolescence, and Depletion Charged Off. 6. Rate.	7. Amount Previous Years.	8. Amount this Year.	Losses not Compensated for by Insurance. 9. Cause of Loss.	10. Amount of Loss.
			$	$		$	$		$

EXPLANATION OF DEDUCTIONS claimed in Schedule A, lines 7 and 18; Schedule B, column 4; Schedule E, column 7; Schedule G, column 2; and Schedule I, Items 4 and 5.

8—6277

Income Tax Supplementary Page 10

		$	$	$	$	$	
NET INCOME FROM RENTS AND ROYALTIES (total of column 3 minus total of columns 4, 5, 6, and 7)		$	$	$	$	$	$

F. INTEREST ON CORPORATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH A TAX OF 2% WAS PAID BY DEBTOR CORPORATION (including such interest received through fiduciaries) $

G. OTHER INCOME (not including dividends, or interest on obligations of the United States).	1. GROSS INCOME.	2. DEDUCTIONS, IF ANY.	
1. Interest on bonds, mortgages, and other obligations of domestic and resident corporations except as reported in Item F	$	$	
2. Interest on bonds of foreign countries and corporations and dividends on stock of foreign corporations			
3. Interest on bank deposits, mortgages, etc			
4.			
5.			
NET TOTAL (total of column 1 minus total of column 2)	$	$	$

H. TOTAL NET INCOME FROM ABOVE SOURCES $

I. GENERAL DEDUCTIONS NOT INCLUDED ABOVE.

1. Interest paid or accrued	$	3. Losses by fire, storm, etc. (explain in table below)	$	5. Other deductions, if any (explain below)	$
2. Taxes paid or accrued		4. Contributions (explain below)		TOTAL	$

J. Total net income on which normal tax is to be calculated at 1918 rates (H minus I) (enter as 25, page 1) $

K(a). Dividends on stock of corporations organized or doing business in the United States (not including income from personal service corporations):

Received directly, $.....; received through partnerships, personal service corporations, and fiduciaries, $..... TOTAL $

K(b). Taxable interest on bonds and other obligations of the United States issued after September 1, 1917 (see instructions, page 2)

L. Total net income subject to surtax at 1918 rates (if this amount is $5,000 or less, make your return on Form 1040A, unless you had income taxable at 1917 or prior-year rates) $

ENTER IN THIS TABLE DETAILS CONCERNING REPAIRS, WEAR AND TEAR, PROPERTY LOSSES, ETC., CLAIMED AS DEDUCTIONS IN SCHEDULES A, E, AND I ABOVE.

1. REFER TO "A," "E" OR "I."	2. KIND OF PROPERTY (IF BUILDINGS, STATE ALSO MATERIAL OF WHICH CONSTRUCTED).	3. YEAR ACQUIRED.	4. COST OF PROPERTY (OR MARKET VALUE MARCH 1, 1913).	5. REPAIRS (NOT OFFSET BY CLAIMS FOR WEAR AND TEAR AND LOSSES).	WEAR AND TEAR, OBSOLESCENCE, AND DEPLETION CHARGED OFF. 6. RATE.	7. AMOUNT PREVIOUS YEARS.	8. AMOUNT THIS YEAR.	LOSSES NOT COMPENSATED FOR BY INSURANCE. 9. CAUSE OF LOSS.	10. AMOUNT OF LOSS.
			$	$		$	$		$

EXPLANATION OF DEDUCTIONS claimed in Schedule A, lines 7 and 18; Schedule B, column 4; Schedule E, column 7; Schedule G, column 2; and Schedule I, Items 4 and 5.

8—8577

TAXPAYER'S WORK SHEET FOR RETURN OF INCOME TAXABLE AT 1918 RATES

A. INCOME FROM BUSINESS OR PROFESSION.

1. Kind of business _____ 2. Business address _____

3. Total sales and income from business or professional services _____ $_____

COST OF GOODS SOLD:		OTHER BUSINESS DEDUCTIONS:	
4. Labor	$	12. Salaries and wages not reported as "Labor" under "Cost of Goods Sold"	$
5. Material and supplies		13. Rent	
6. Merchandise bought for sale		14. Interest on business indebtedness	
7. Other costs (submit schedule of principal items at foot of page or on separate sheet)		15. Taxes on business and business property	
8. Plus inventories at beginning of year		16. Repairs, wear and tear, obsolescence, depletion, and property losses (explain in table below)	
9. Total	$	17. Bad debts arising from sales	
10. Less inventories at end of year		18. Other expenses (submit schedule of principal items at foot of page or on separate sheet)	
11. Net Cost of Goods Sold	$	19. Total Other Business Deductions	$

20. Net Cost of Goods Sold Plus Other Business Deductions _____ $_____

21. Net Income from Business or Profession _____ $_____

B. INCOME FROM SALARIES, WAGES, COMMISSIONS, BONUSES, DIRECTOR'S FEES, AND PENSIONS.

1. Occupation.	2. Name and Address of Employer.	3. Gross Income.	4. Deductions, if any.
		$	$

Net Income from Salaries, etc. (total of column 3 minus total of column 4) _____ $_____ $_____ $_____

C. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND ESTATES AND TRUSTS (not including interest on tax-free covenant bonds received through fiduciaries, which should be included in Item F; dividends, which should be included in Item K(a); taxable interest on obligations of the U. S., which should be included in Item K(b), or income taxable at 1917 or prior-year rates—see table 14, page 1) _____ $_____

D. PROFIT FROM SALE OF LAND, BUILDINGS, STOCKS, BONDS, AND OTHER PROPERTY.

1. Kind of Property.	2. Year Acquired.	3. Name and Address of Purchaser or Broker.	4. Sale Price.	5. Original Cost or Market Value March 1, 1913.	6. Cost of Subsequent Improvements, if any.	7. Depreciation Subsequently Sustained.
			$	$	$	$

Net Profit from Sales (total of columns 4 and 7 minus total of columns 5 and 6) _____ $_____ $_____ $_____ $_____ $_____

E. INCOME FROM RENTS AND ROYALTIES.

1. Kind of Property.	2. Name and Address of Tenant, Lessee, Etc.	3. Amount of Rent and Royalties.	4. Repairs, Wear and Tear, Obsolescence, Depletion, and Property Losses.	5. Interest.	6. Taxes.	7. Other Expenses (Explain Below).

DETACH THE RETURN (CONTAINING AFFIDAVIT) AND DELIVER OR SEND IT WITH PAYMENT TO COLLECTOR OF INTERNAL REVENUE ON OR BEFORE MARCH 15, 1919

KEEP THIS WORK SHEET AND THE INSTRUCTION SHEET

Page 1 of Work Sheet

Form 1040—UNITED STATES INTERNAL REVENUE SERVICE

WORK SHEET FOR INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF MORE THAN $5,000 FOR CALENDAR YEAR 1918

If the return is made for a part of the calendar year 1918, the data on which the period covered by the return ends must be plainly stated at the head of the return.

PRINT NAME AND ADDRESS PLAINLY BELOW

(Name)

(Street and number or rural route)

(Post office and State)

CASH	
CHECK	
M. O.	
CERT. of IND.	

IF YOU NEED ASSISTANCE GO TO A DEPUTY COLLECTOR OR TO THE COLLECTOR'S OFFICE BUT FIRST READ INSTRUCTIONS AND FILL OUT THIS SHEET (FACE AND BACK) IN PENCIL AS WELL AS YOU CAN

1. Did you make a return for 1917? ____
2. If no, what address did you give on that return? ____
3. To what Collector's office was it sent? (Give district or city and State.) ____
4. Give number, if any, assigned to you for 1917, if it does not appear in address at head of return ____
5. Were you in 1918 married and living with wife (or husband)? ____
6. If not, were you head of a family as defined in instructions under "Personal Exemption"? ____
7. How many dependent persons under 18 (or mentally or physically defective) received their chief support from you in 1918? ____
8. If you claim any additional exemption on account of dependent persons other than your children, what was their relationship to you? ____
9. Write "R" if this return shows income received or "A" if it shows income accrued ____
10. Did your wife (or husband) or minor child make a separate return? ____ (If so, give name and address entered at head of that return.) ____
11. Enter below all **nontaxable income** received by (or accrued to) you during the year:

Class of Securities.	Principal.	Interest.	Class of Securities.	Principal.	Interest.	Salary, etc. (Give source).	Amount.
Bonds of First Liberty Loan uncovverted	$	$	Obligations of States and Territories, political subdivisions thereof, and the District of Columbia	$	$		$
Other obligations of the U. S. issued before Sept. 1, 1917, and obligations of U. S. possessions			Federal Farm Loan Bonds				

12. State amount of **stock dividends** received by (or accrued to) you directly during the year, declared from earnings of domestic or resident corporations accumulated since February 28, 1913, and prior to January 1, 1918:
(a) Accumulated in 1917, $____ (b) Accumulated in 1916, $____ (c) Accumulated since February 28, 1913, and prior to January 1, 1916, $____
13. Enter in table below **interest on Liberty Bonds** and other obligations of the United States issued since September 1, 1917, received by (or accrued to) you during the year, and maximum amount of such obligations (par value) held at any one time from which such interest was derived (see instructions, page 2, under K(b):

1. Class of Obligation.	Individual Holdings. 2. Amount of Interest.	3. Maximum Amount of Obligations.	Share of Holdings of Partnerships, Personal Service Corporations, and Estates and Trusts. 4. Amount of Interest.	5. Maximum Amount of Obligations.	6. Total of Columns 3 and 5.	7. Maximum Exemption
(a) First Liberty Loan converted into Second Loan and Second Liberty Loan unconverted (interest received since January 1, 1918)	$	$	$	$	$	$45,000 (See Note.) In addition an exemption of $5,000 may be claimed as to any one of these classes or may be divided among them.
(b) First and Second Liberty Loans converted into Third Loan and Third Liberty Loan						
(c) First Liberty Loan converted into Fourth Loan						30,000
(d) Fourth Liberty Loan						30,000
(e) Other obligations issued since September 1, 1917						0
(f) Totals	$	$	$	$	$	

NOTE.—This exemption (maximum $45,000) is limited to one and one-half times the amount of bonds of the Fourth Liberty Loan originally subscribed for and still held. State here amount of bonds of the Fourth Liberty Loan originally subscribed for and still held ____ $____

14. Enter in the table below **income from partnerships, personal service corporations, and estates and trusts:**

1. Name of Partnership, Personal Service Corporation, Estate, or Trust. (If Estate or Trust, Give Also Name of Fiduciary.)	2. Period (Enter 1918 or Date on Which Fiscal Year Ended).	3. Cash Dividends.	4. Stock Dividends.	5. Interest on Tax-Free Bonds (From Estates and Trusts Only).	6. Interest on Liberty Bonds, etc., Issued Since Sept. 1, 1917.	7. Other Income.	8. Total.
		$	$	$	$	$	$
(a) Totals taxable at 1918 rates (see instructions, page 2, under C)		Include in K(a), page 2. $	Include in K(a), page 2. $	Include in F, page 2. $	See instructions, page 2, under K(b): $	Enter as C, page 2. $	X X X X Enter as 17, below.
(b) Totals taxable at 1917 rates (see instructions, page 2, under C)		$	$	X X X X	$	Enter as 20, below. $	$

(c) Amount of stock dividends (column 4) taxable at 1916 rates (enter as 20), $____ (d) Amount of stock dividends taxable at 1913–15 rates (enter as 23), $____

RETAIN THIS SHEET AND INSTRUCTION SHEET AVAILABLE FOR INSPECTION BY REVENUE OFFICER

Total Net Income Subject to Surtax.		Total Net Income Subject to Normal Tax.		Calculation of Tax.	
15. Item L, page 2	$	AT 1918 RATES.		33. Normal tax of 6% on amount of Item 28	$
16. Item 12 (a)		25. Net income shown on page 2, Item J	$	34. Normal tax of 12% on amount of Item 29	
17. Item 14 (b), column 8		26. Less personal exemption		35. Normal tax of 4% on amount of Item 32	
18. Total (Items 15, 16, and 17)	$	27. Balance	$	36. Surtax at 1918 rates (see surtax table on page 1 of instructions)	
19. Item 12 (b)		28. Amount subject to tax at 6% (not over $4,000)		37. Surtax at prior-year rates (see surtax table on page 1 of instructions)	
20. Item 14 (c)		29. Balance subject to tax at 12%	$	38. Total tax	$
21. Total (Items 18, 19, and 20)	$	AT 1917 RATES.		39. Tax paid at source (3% of amount of Item F, page 2)	
22. Item 12 (c)		30. Amount of Item 14 (b), column 7	$	40. Income, war profits, and excess-profits taxes paid in 1918 to foreign countries and possessions of the U. S.	
23. Item 14 (d)		31. Balance of personal exemption not used above (Item 26 minus Item 25)		41. Balance of tax due (Item 38 minus Items 39 and 40)	$
24. Total net income (Items 21, 22, and 23)	$	32. Balance subject to tax at 4%	$	42. Amount of tax paid on submission of return	$

TAXPAYER'S RECORD OF PAYMENTS

Payment.	Amount.	Date.	Check or M. O. No.	Bank or Office of Issue.
First	$			
Second	$			
Third	$			
Fourth	$			

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Income Tax
Supplementary Page 11

TAXPAYER'S WORK SHEET FOR RETURN OF INCOME TAXABLE AT 1918 RATES

A. INCOME FROM BUSINESS OR PROFESSION.

1. Kind of business ____ 2. Business address ____

3. Total sales and income from business or professional services ____ $____

COST OF GOODS SOLD:

4. Labor ____ $____
5. Material and supplies ____
6. Merchandise bought for sale ____
7. Other costs (submit schedule of principal items at foot of page or on separate sheet) ____
8. Plus inventories at beginning of year ____
9. Total ____ $____
10. Less inventories at end of year ____
11. Net Cost of Goods Sold ____ $____

OTHER BUSINESS DEDUCTIONS:

12. Salaries and wages not reported as "Labor" under "Cost of Goods Sold" ____ $____
13. Rent ____
14. Interest on business indebtedness ____
15. Taxes on business and business property ____
16. Repairs, wear and tear, obsolescence, depletion, and property losses (explain in table below) ____
17. Bad debts arising from sales ____
18. Other expenses (submit schedule of principal items at foot of page or on separate sheet) ____
19. Total Other Business Deductions ____ $____

20. Net Cost of Goods Sold Plus Other Business Deductions ____ $____

21. Net Income from Business or Profession ____ $____

B. INCOME FROM SALARIES, WAGES, COMMISSIONS, BONUSES, DIRECTOR'S FEES, AND PENSIONS.

1. Occupation.	2. Name and Address of Employer.	3. Gross Income.	4. Deductions, if any.
		$	$

Net Income from Salaries, etc. (total of column 3 minus total of column 4) ____ $____ $____ $____

C. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND ESTATES AND TRUSTS (not including interest on tax-free covenant bonds received through fiduciaries, which should be included in Item F; dividends, which should be included in Item K(a); taxable interest on obligations of the U. S., which should be included in Item K(b); or income taxable at 1917 or prior-year rates—see table 14, page 1) ____ $____

D. PROFIT FROM SALE OF LAND, BUILDINGS, STOCKS, BONDS, AND OTHER PROPERTY.

1. Kind of Property.	2. Year Acquired.	3. Name and Address of Purchaser or Broker.	4. Sale Price.	5. Original Cost or Market Value March 1, 1913.	6. Cost of Subsequent Improvements, if any.	7. Depreciation Subsequently Sustained.
			$	$	$	$

Net Profit from Sales (total of columns 4 and 7 minus total of columns 5 and 6) ____ $____ $____ $____ $____ $____

E. INCOME FROM RENTS AND ROYALTIES.

1. Kind of Property.	2. Name and Address of Tenant, Lessee, Etc.	3. Amount of Rent and Royalties.	4. Repairs, Wear and Tear, Obsolescence, Depletion, and Property Losses.	5. Interest.	6. Taxes.	7. Other Expenses (Explain Below).
		$	$	$	$	$

Net Income from Rents and Royalties (total of column 3 minus total of columns 4, 5, 6, and 7) ____ $____ $____ $____ $____ $____ $____

F. INTEREST ON CORPORATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH A TAX OF 2% WAS PAID BY DEBTOR CORPORATION (including such interest received through fiduciaries) ____ $____

G. OTHER INCOME (not including dividends, or interest on obligations of the United States).

	1. Gross Income.	2. Deductions, if any.
1. Interest on bonds, mortgages, and other obligations of domestic and resident corporations except as reported in Item F	$	$
2. Interest on bonds of foreign countries and corporations and dividends on stock of foreign corporations		
3. Interest on bank deposits, mortgages, etc.		
4.		
5.		
Net Total (total of column 1 minus total of column 2)	$	$

$____

H. TOTAL NET INCOME FROM ABOVE SOURCES ____ $____

I. GENERAL DEDUCTIONS NOT INCLUDED ABOVE.

1. Interest paid or accrued ____ $____
2. Taxes paid or accrued ____
3. Losses by fire, storm, etc. (explain in table below) ____ $____
4. Contributions (explain below) ____
5. Other deductions, if any (explain below) ____ $____

Total ____ $____

J. Total net income on which normal tax is to be calculated at 1918 rates (H minus I) (enter as 25, page 1) ____ $____

K(a). Dividends on stock of corporations organized or doing business in the United States (not including income from personal service corporations):

Received directly, $____; received through partnerships, personal service corporations, and fiduciaries, $____ Total ____ $____

K(b). Taxable interest on bonds and other obligations of the United States issued after September 1, 1917 (see instructions, page 2) ____ $____

L. Total net income subject to surtax at 1918 rates (if this amount is $5,000 or less, make your return on Form 1040A, unless you had income taxable at 1917 or prior-year rates) ____ $____

ENTER IN THIS TABLE DETAILS CONCERNING REPAIRS, WEAR AND TEAR, PROPERTY LOSSES, ETC., CLAIMED AS DEDUCTIONS IN SCHEDULES A, E, AND I ABOVE.

1. Refer to "A," "E," or "I."	2. Kind of Property (or Buildings, State also Material of which Constructed).	3. Year Acquired.	4. Cost of Property (or Market Value March 1, 1913).	5. Repairs (not Offset by Claims for Wear and Tear and Losses).	Wear and Tear, Obsolescence, and Depletion Charged Off. 6. Rate.	7. Amount Previous Years.	8. Amount this Year.	Losses not Compensated for by Insurance. 9. Cause of Loss.	10. Amount of Loss.
			$	$		$	$		$

EXPLANATION OF DEDUCTIONS claimed in Schedule A, lines 7 and 18; Schedule B, column 4; Schedule E, column 7; Schedule G, column 2; and Schedule I, Items 4 and 5.

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Income Tax
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Net Income from Rents and Royalties (total of column 3 minus total of columns 4, 5, 6, and 7) $ $ $ $ $ $

F. INTEREST ON CORPORATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH A TAX OF 2% WAS PAID BY DEBTOR CORPORATION (including such interest received through fiduciaries) $

G. OTHER INCOME (not including dividends, or interest on obligations of the United States).

	1. Gross Income.	2. Deductions, if any.
1. Interest on bonds, mortgages, and other obligations of domestic and resident corporations except as reported in Item F	$	$
2. Interest on bonds of foreign countries and corporations and dividends on stock of foreign corporations		
3. Interest on bank deposits, mortgages, etc.		
4.		
5.		
Net Total (total of column 1 minus total of column 2)	$	$

H. TOTAL NET INCOME FROM ABOVE SOURCES $

I. GENERAL DEDUCTIONS NOT INCLUDED ABOVE.

1. Interest paid or accrued $	3. Losses by fire, storm, etc. (explain in table below) $	5. Other deductions, if any (explain below) $	
2. Taxes paid or accrued	4. Contributions (explain below)	Total	$

J. Total net income on which normal tax is to be calculated at 1918 rates (H minus I) (enter as 25, page 1) $

K(a). Dividends on stock of corporations organized or doing business in the United States (not including income from personal service corporations)·

Received directly, $; received through partnerships, personal service corporations, and fiduciaries, $ Total $

K(b). Taxable interest on bonds and other obligations of the United States issued after September 1, 1917 (see instructions, page 2)

L. Total net income subject to surtax at 1918 rates (if this amount is $5,000 or less, make your return on Form 1040A, unless you had income taxable at 1917 or prior-year rates) $

ENTER IN THIS TABLE DETAILS CONCERNING REPAIRS, WEAR AND TEAR, PROPERTY LOSSES, ETC., CLAIMED AS DEDUCTIONS IN SCHEDULES A, E, AND I ABOVE.

1. Refer to "A," "E," or "I."	2. Kind of Property (if Buildings, State also Material of which Constructed).	3. Year Acquired.	4. Cost of Property (or Market Value March 1, 1913).	5. Repairs (not Offset by Claims for Wear and Tear and Losses).	Wear and Tear, Obsolescence, and Depletion Charged Off. 6. Rate.	7. Amount Previous Years.	8. Amount this Year.	Losses not Compensated for by Insurance. 9. Cause of Loss.	10. Amount of Loss.
			$	$		$	$		$

EXPLANATION OF DEDUCTIONS claimed in Schedule A, lines 7 and 18; Schedule B, column 4; Schedule E, column 7; Schedule G, column 2; and Schedule I, Items 4 and 5.

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INSTRUCTIONS FOR FILLING IN TAXABLE INCOME

If the form has not space enough for all entries, make additional entries on a separate sheet of paper and attach it securely to the return

A. INCOME FROM BUSINESS OR PROFESSION.

Report here income from—

(a) Sale of merchandise, or of products of manufacturing, construction, mining, and agriculture. (For farm income see Instruction IV on the other side of this sheet.)

(b) Business service, such as transportation, storage, laundering, hotel and restaurant service, livery and garage service, etc., if you owned the business. If you were engaged in the business as an employee, report your salary or wages in Schedule B.

(c) A profession, such as medicine, law, or dentistry, if you practiced it on your own account. If you were employed on a salary, report your salary in Schedule B.

In general, report in Schedule A any income in the earning of which you incurred expenses for labor, rent, etc. Do not report here partnership profits or profits of personal service corporations, which should be entered under C, or dividends from other corporations, which should be entered under K(a).

If you are a farmer (or a farm owner renting your farm to another person on shares), enter on line 21 your net income from farming, as shown by your "Schedule of Farm Income and Expenses."

Kind of business.—State kind of goods dealt in or kind of services rendered, and whether manufacturer, jobber, wholesaler, retailer, importer, broker, etc.

If you keep books showing income accrued, report such income instead of cash received, and report expenses incurred instead of expenses paid.

Income received from sale of lands, buildings, equipment, stocks, bonds, and other property not dealt in as a business should be reported under D.

If you have a complete profit and loss statement, showing all the information called for under "Cost of goods sold" and "Other business deductions," attach it to the return and enter the amount of net income on line 21, Schedule A.

Total sales and income from business or profession.—Report the total amount derived from sales or from services, less any discounts or allowances from the sale price or service charge.

Inventories.—If inventories were taken at cost, write "C" on line 8, immediately before the amount column; if at cost or market, whichever is lower, write "C or M."

Other business deductions.—Do not include cost of business equipment or furniture, expenditures for permanent improvements to property, or living and family expenses. Do not deduct interest on your own investment in your business, or salary or wages for your own services or the services of your family, unless these items are included as income in Schedule B or G.

Rent.—Report here rent for business property (not including rent for dwelling you occupy).

Interest.—Report here interest on business indebtedness, including indebtedness incurred to purchase or carry business property.

Taxes.—Report here only taxes on business property or for carrying on business. Do not include taxes assessed against local benefits of a kind tending to increase the value of the property assessed, as for paving, sewers, etc., nor Federal income taxes.

Repairs, wear and tear, obsolescence, and property losses.—Report here (a) ordinary repairs required to keep property in usable condition, (b) depreciation during the year on business property only to the extent not offset by repairs, replacements, or losses claimed as deductions in this or previous returns, (c) reasonable allowance for obsolescence (if any) of business property for which no deduction has been claimed elsewhere in this return or in any previous return, and (d) losses of business property by fire, storm, or other casualty, or theft, not compensated for by insurance or otherwise and not made good by repairs or replacements claimed as deductions. Explain these deductions in table at foot of page 2 of return.

Any losses of property not used in your business, such as your dwelling or household furniture, should be reported in Schedule I.

The amount claimed for wear and tear or depreciation should not exceed the original cost of the property (or its value March 1, 1913, if acquired before that date) divided by its total estimated life in years. When the amount of depreciation allowed equals the cost of the property (or its value March 1, 1913), no further claim should be made.

Do not claim any deduction for depreciation in the value of a building occupied by the owner as his dwelling, or of other property held for personal use. Do not claim any deduction for depreciation of real estate (exclusive of improvements thereon), nor for depreciation of stocks, bonds, and other securities.

Do not claim depreciation or losses of articles that have been taken into your inventory at a figure reflecting the reduction in value.

Depreciation of patents, copyrights, etc., and depletion of mines, etc.—If you wish to claim a deduction on account of depreciation in the value of patents, copyrights, franchises, and other legal privileges, or on account of depletion of mines and oil and gas wells, see the income and profits tax regulations.

Bad debts.—Report only debts which you have ascertained to be worthless and have charged off during the year.

A bad debt offsetting income accrued since March 1, 1913, will not be allowed as a deduction unless the amount was reflected in the income reported for the year in which the debt was created.

State under "Explanation of deductions," at the foot of the page, how the debts were ascertained to be worthless, or if the deduction is based on a reserve, state specifically the basis on which such reserve has been computed. Insolvency of the debtor, inability to collect by legal proceedings, or inability of debtor to pay, ascertained by a mercantile agency, would be a sufficient indication of worthlessness.

If at any future time a debt charged off as worthless and allowed as a deduction is collected, the amount collected must be returned as income.

Unpaid debts are not deductible if made good by recovery of property sold or retention of property pledged.

Bad debts arising out of personal loans should be reported in Schedule I.

Other expenses.—Do not include your personal exemption here. This is to be reported as Item 26.

Net loss.—If the net cost of goods sold plus other business deduction is in excess of the total amount of sales and income from business or professional services, report the difference as a loss by using red ink or a minus sign.

B. INCOME FROM SALARIES, COMMISSIONS, BONUSES, DIRECTOR'S FEES, AND PENSIONS.

If salary, wages, or other compensation was at the rate of $1,000 or more per annum, report it on a separate line, together with the occupation or position and employer's name and address. All other income from salaries, wages, commissions, etc., at a rate less than $1,000 per annum should be reported on a single line.

Do not report here pay, not exceeding $3,500, for active service in the Army or Navy (see Instruction III, paragraph 1, on the other side of this sheet). Report such pay in table 11, page 1 of the return.

Explain deductions in the space at the foot of page 2 of the return.

C. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND ESTATES AND TRUSTS.

Report your share (whether distributed or not) in the profits of the partnership or personal service corporation or in the income of the estate or trust (if placed to your credit), not including the part of such share that consisted of dividends on stock of ordinary corporations (to be included in Item K (a)), interest on obligations of the United States (see table 13, page 1 of the return, and instructions under K (b), below), or (in the case of estates and trusts) interest on corporation bonds containing a tax-free covenant, upon which a tax of 2 per cent was paid (or will be paid) by the debtor corporation (to be included in Item F).

Report in Schedule B salary received from partnership or personal service corporation.

Apportionment of partnership income between years.—If you derived income from a partnership whose fiscal year differed from the calendar year, assign to 1917 as many twelfths of your share of the partnership's income (except stock dividends and Liberty Bond interest received through the partnership) as the number of months of the partnership's fiscal year that fell in the calendar year 1917. Assign to 1918 the remainder of your share of the partnership's income, except stock dividends and Liberty Bond interest, which should be apportioned as provided in instructions under K (a) and K (b) below.

D. PROFIT FROM SALE OF LAND, BUILDINGS, STOCKS, BONDS, AND OTHER PROPERTY.

Use this schedule for all sales of real estate, and for sales of other property that you did not deal in as a business.

Cost.—Enter the original cost of the property or, if it was acquired before March 1, 1913, its fair market value on that date. Expenses incidental to the purchase may

INSTRUCTIONS FOR FILLING INDIVIDUAL INCOME TAX RETURN FOR NET INCOMES OF MORE THAN $5,000

I. HOW TO DECIDE WHETHER TO MAKE A RETURN.

1. Calculate your net income by filling in page 2 of the work sheet according to page 2 of the instructions.

2. Add the net income of your wife (or husband) and dependent minor children, if any, except as provided in paragraph 5.

3. The total family income, calculated in accordance with paragraphs 1 and 2, must be reported, either in your return or in a separate return by wife (or husband), if it equaled or exceeded—

(a) $2,000 if you were married and lived with your wife (or husband).

(b) $1,000 if you were not married or did not live with your wife (or husband).

4. In any case, you must make a return if your net income equalled or exceeded the amount of your personal exemption, not including any additional exemption allowed you as head of family or on account of dependents.

5. Income of a minor or incompetent, if derived from a separate estate under control of a guardian, trustee, or other fiduciary, must be reported by his guardian or other legal representative.

6. If your wife (or husband) had any separate income, she (or he) should make a separate return.

II. ACCRUED OR RECEIVED INCOME.

1. If you keep books showing income accrued and expenses incurred during the year, make your return from your books, but do not fail to include all your income even if it is not entered in your books.

2. If you do not keep books showing income accrued and expenses incurred, report income received and expenses paid.

3. If you report income accrued, you must include all income that accrued in 1917 but was not received until 1918, unless it was reported in last year's return.

4. If you report income received, you must include all income constructively received, as bank interest credited to your account.

III. RECEIPTS EXEMPT FROM TAX.

The following classes of receipts are exempt from income tax, and need not be reported on page 2 of the return. However, nontaxable income of the classes described in paragraphs 1, 3, 4, 5, and 6 should be reported in table 11, page 1 of the return.

1. Pay not exceeding $3,500, for active services in the military and naval forces of the United States.

2. Gifts (not made as a consideration for service rendered) and money and property acquired under a will or by inheritance (but the income derived from money or property received by gift, will, or inheritance is taxable and must be reported).

3. Interest on bonds and other obligations of the United States issued before September 1, 1917, and on such bonds and other obligations issued since that date, provided your holdings do not exceed the exemptions allowed by law. See table 13, page 1 of return, and instructions, page 2, under K(b).

4. Interest on bonds and other obligations of United States possessions (Philippines, Porto Rico, etc.).

5. Interest on bonds and other obligations of States, territories, political subdivisions thereof (such as cities, counties, and townships), and the District of Columbia.

6. Interest on Federal Farm Loan bonds.

7. Proceeds of life insurance policies paid on the death of the insured.

8. Amounts received by the insured under life insurance, endowment, and annuity contracts, provided such payments do not exceed the premiums paid in. The amount by which the total payments that have been received exceed the total premiums paid in is income and must be reported in Schedule G.

9. Amounts received from accident and health insurance and under workman's compensation acts plus the amount of any damages received by suit or agreement on account of injuries or sickness.

IV. FARMER'S INCOME SCHEDULE.

If you are a farmer or a farm owner renting your farm out on shares, get from the collector and fill out a "Schedule of Farm Income and Expenses." Transfer the net farm income to line 21 of Schedule A of the return. Report income from salaries, rents, interest, sales of property, etc., in Schedules B to G of the return. Send your Schedule of Farm Income and Expenses with the return to the collector.

V. PERIOD TO BE COVERED BY RETURN.

1. You must report your net income for the calendar year 1918, except under the conditions stated in paragraph 2.

2. If you are engaged in business and keep books of account which are regularly closed each year at the end of some month other than December to determine your annual profit or loss, you may, after obtaining the Commissioner's permission, make a return covering the period from January 1, 1918, to the date on which you closed your books, and thereafter for each period of 12 months.

3. If you make a return for a part of the calendar year 1918, your personal exemption shall be as many twelfths of the amount that would be allowed for a full year as there are months in the period covered by the return.

4. The dates on which the period covered by the return begins and ends, if other than the calendar year 1918, must be plainly stated at the head of the return; answers to questions 5, 6, and 7 must be given for that period; and the affidavit must be changed accordingly.

VI. PERSONAL AND FAMILY EXEMPTION.

1. If you were married and lived with your wife (or husband) or were head of a family in 1918, you may subtract from your net income, before calculating your tax, a family exemption of $2,000 plus $200 for each person under 18 (or mentally or physically defective) who received his chief support from you. If husband and wife make separate returns, this exemption may be claimed by either (but not by both) or may be divided between them.

2. If you were not married or did not live with wife (or husband) and were not head of a family in 1918, you are entitled to a personal exemption of $1,000 plus $200 for each dependent person under 18 (or mentally or physically defective) who received his chief support from you.

3. If you were entitled to any of the foregoing exemptions during a part of the year only, you may claim as many twelfths of the exemptions stated as there were months in such part of the year. Any part of a month may be counted as a month.

4. The personal or family exemption must be reported on line 26, page 1 of the return, and must be supported by answers to questions 5, 6, 7, and 8.

5. A "head of family" is a person who is the chief support of one or more persons living in his household, who are closely related to him (or her) by blood, marriage, or adoption.

VII. AFFIDAVIT.

1. The affidavit must be executed by the person whose income is reported unless he is a minor or incompetent, or unless he is ill, absent from the country, or otherwise incapacitated, in which case the legal representative or agent may execute the affidavit. However, a minor making his own return may execute the affidavit.

2. The oath will be administered without charge by any collector or deputy collector of internal revenue, or (if you are in the military or naval service of the United States) by any military or naval officer who is authorized to administer oaths for purposes of military or naval justice and administration. If an internal revenue officer is not available, the return should be sworn to before a notary public, justice of the peace, or other person authorized to administer oaths.

VIII. WHEN AND WHERE THE RETURN SHOULD BE SENT.

Send your return to the collector of internal revenue for the district in which you live or have your principal place of business so that it will reach him on or before March 15, 1919. If the address of the collector is not printed on the return and you do not know it, ask at the post office or bank.

IX. WHEN AND TO WHOM THE TAX MUST BE PAID.

1. The tax should be paid, if possible, by sending or bringing with the return a check or money order drawn to the order of "Collector of Internal Revenue at [insert name of city and State]."

2. Do not send cash through the mail, or pay it in person except at the office of the collector or a regularly established internal revenue stamp office.

3. At least one-fourth of the tax is due at the same time that this return is due.

4. An additional amount sufficient to bring the total payments up to one-half of the tax must be paid on or before June 15, 1919.

5. An additional amount sufficient to bring the total payments up to three-fourths of the tax must be paid on or before September 15, 1919.

6. The entire remainder of the tax must be paid on or before December 15, 1919.

7. If any payment is not made when due, the entire unpaid balance of the tax will become due 10 days after demand therefor by the collector.

8. If you pay in cash, do not fail to get a receipt at the time of payment. If you pay by check or money order, your canceled check or your money order receipt will serve as a receipt.

X. PENALTIES.

For Making False or Fraudulent Return.

Not exceeding $10,000 or not exceeding one year's imprisonment, or both, in the discretion of the court, and, in addition, 50 per cent of the tax evaded.

For Failing to Make Return on Time.

Not more than $1,000, and, in addition, 25 per cent of the amount of tax due.

For Failing to Pay Tax When Due.

Five per cent of the amount due but unpaid, plus 12 per cent interest per annum for the time during which it remains unpaid.

TABLES AND INSTRUCTIONS FOR CALCULATION OF SURTAX.

SURTAX RATES FOR 1918.

Amount of net income.	Rate.	Total surtax on each amount.	Amount of net income.	Rate.	Total surtax on each amount.
A	B	C	A	B	C
$5,000			60,000	28%	$8,110
6,000	1%	$10	62,000	29%	8,690
8,000	2%	50	64,000	30%	9,290
10,000	3%	110	66,000	31%	9,910
12,000	4%	190	68,000	32%	10,550
14,000	5%	290	70,000	33%	11,210
16,000	6%	410	72,000	34%	11,890
18,000	7%	550	74,000	35%	12,590
20,000	8%	710	76,000	36%	13,310
22,000	9%	890	78,000	37%	14,050
24,000	10%	1,090	80,000	38%	14,810
26,000	11%	1,310	82,000	39%	15,590
28,000	12%	1,550	84,000	40%	16,390
30,000	13%	1,810	86,000	41%	17,210
32,000	14%	2,090	88,000	42%	18,050
34,000	15%	2,390	90,000	43%	18,910
36,000	16%	2,710	92,000	44%	19,790
38,000	17%	3,050	94,000	45%	20,690
40,000	18%	3,410	96,000	46%	21,610
42,000	19%	3,790	98,000	47%	22,550
44,000	20%	4,190	100,000	48%	23,510
46,000	21%	4,610	150,000	52%	49,510
48,000	22%	5,050	200,000	56%	77,510
50,000	23%	5,510	300,000	60%	137,610
52,000	24%	5,990	500,000	63%	263,510
54,000	25%	6,490	1,000,000	64%	583,510
56,000	26%	7,010	1,000,000+	65%	
58,000	27%	7,550			

SURTAX RATES FOR 1917.

Amount of net income.	Rate.	Amount of surtax at each rate.
A	B	C
$5,000		
7,500	1%	$25
10,000	2%	50
12,500	3%	75
15,000	4%	100
20,000	5%	250
40,000	8%	1,600
60,000	12%	2,400
80,000	17%	3,400
100,000	22%	4,400
150,000	27%	13,500
200,000	31%	15,500
250,000	37%	18,500
300,000	42%	21,000
500,000	46%	92,000
750,000	50%	125,000
1,000,000	55%	137,500
1,500,000	61%	305,000
2,000,000	62%	310,000
2,000,000+	63%	

SURTAX RATES FOR 1916.

Amount of net income.	Rate.	Amount of surtax at each rate.
A	B	C
$20,000		
40,000	1%	$200
60,000	2%	400
80,000	3%	600
100,000	4%	800
150,000	5%	2,500
200,000	6%	3,000
250,000	7%	3,500
300,000	8%	4,000
500,000	9%	18,000
1,000,000	10%	50,000
1,500,000	11%	55,000
2,000,000	12%	60,000
2,000,000+	13%	

SURTAX RATES FOR 1913-15.

Amount of net income.	Rate.	Amount of surtax at each rate.
$20,000		
50,000	1%	$300
75,000	2%	500
100,000	3%	750
250,000	4%	6,000
500,000	5%	12,500
500,000+	6%	

CALCULATION OF SURTAX AT 1918 RATES.

To compute the amount of surtax on any amount of net income in excess of $5,000:

First: Find in column A the largest sum which is less than the amount of the total net income subject to surtax at 1918 rates (Item L, page 2, or Item 15, page 1, of the return).

Second: Find in column C the corresponding amount of total surtax.

Third: To the amount of surtax found as above add an amount computed as follows: Subtract from the net income the sum found in column A and multiply the remainder by the rate shown on the next line below in column B.

The sum of these two amounts is the total surtax due.

1. ITEM.	2. Example: Net income $13,800.	3. Computation of surtax on Item 15, page 1 of the return
1. Largest sum in column A which is less than the amount of the total net income	$12,000.00	$
2. Total surtax thereon shown in column C	190.00	$
3. Remainder of net income after subtracting Item I, above	1,800.00	$
4. Surtax on this remainder at rate shown in column B on line below that from which Item I was taken	90.00	$
5. Total surtax due (sum of Items 2 and 4)	280.00	$

Item 5, column 3, should be entered as Item 36, page 1 of the return.

CALCULATION OF SURTAX AT PRIOR-YEAR RATES.

To calculate surtax at 1917 rates:

First: Enter on the first line of column 1, below, the amount of Item 15, page 1 of the return.

Second: Enter in column 2 either (a) the next larger amount shown in column A of the 1917 surtax table, or (b) the amount of Item 18, page 1 of the return, if less than such amount.

Third: Enter in column 3 the difference between the amounts entered in columns 1 and 2.

Fourth: Enter in column 4 the rate of tax shown in column B of the surtax table on the same line as the amount referred to in (a) of the second step.

Fifth: Enter in column 5 the product of figures in columns 3 and 4.

If the amount of Item 18 is greater than the amount in column A of the 1917 surtax table referred to in (a) of the second step, proceed as follows:

Sixth: Enter on the second line of column 1 the largest amount in column A of the surtax table which is smaller than Item 18.

Seventh: Enter in column 2 the amount of Item 18.

Eighth: Enter in column 3 the difference between the amounts entered in columns 1 and 2.

Ninth: Enter in column 4 the rate shown in column B of the surtax table on the line below that on which is shown the amount entered on the second line of column 1.

Tenth: Enter in column 5 the product of the figures in columns 3 and 4.

Eleventh: Enter on line 3, column 5, the sum of the amounts shown in column C of the surtax table opposite the percentages (if any) shown in column B between the percentages that were entered on lines 1 and 2 of column 4.

	1.	2.	3.	4. (Per cent.)	5.
1.	$	$	$		$
2.					
3.					
4.					
5.					
6.					
Total					$

The total of column 5 should be entered as Item 37, page 1 of the return.

NOTE.—If you received stock dividends taxable at 1916 or at 1913-15 rates, calculate the tax in the same manner described for 1917 rates, using the appropriate surtax tables and the amounts of Items 18 and 21 for 1916 and 21 and 24 for 1913-15.

Income Tax
Supplementary Page 13

Income Tax
Supplementary Page 13

INSTRUCTIONS FOR FILLING IN TAXABLE INCOME

If the form has not space enough for all entries, make additional entries on a separate sheet of paper and attach it securely to the return.

A. INCOME FROM BUSINESS OR PROFESSION.

Report here income from—

(a) Sale of merchandise, or of products of manufacturing, construction, mining, and agriculture. (For farm income see Instruction IV on the other side of this sheet.)

(b) Business service, such as transportation, storage, laundering, hotel and restaurant service, livery and garage service, etc., if you conducted a business. If you were engaged in the business as an employee, report your salary or wages in Schedule B.

(c) A profession, such as medicine, law, or dentistry, if you practiced it on your own account. If you were employed on a salary, report your salary in Schedule B.

In general, report in Schedule A any income in the earning of which you incurred expenses for labor, rent, etc. Do not report here partnership profits or profits of personal service corporations, which should be entered under C, or dividends from other corporations, which should be entered under K(a).

If you are a farmer (or a farm owner renting your farm to another person on shares), enter on line 21 your net income from farming, as shown by your "Schedule of Farm Income and Expenses."

Kind of business.—State kind of goods dealt in or kind of services rendered, and whether manufacturer, jobber, wholesaler, retailer, importer, broker, etc.

If you keep books showing income accrued, report such income instead of cash received, and report expenses incurred instead of expenses paid.

Income received from sale of lands, buildings, equipment, stocks, bonds, and other property not dealt in as a business should be reported under D.

If you have a complete profit and loss statement, showing all the information called for under "Cost of goods sold" and "Other business deductions," attach it to the return and enter the amount of net income on line 21, Schedule A.

Total sales and income from business or profession.—Report the total amount derived from sales or from services, less any discounts or allowances from the sale price or service charge.

Inventories.—If inventories were taken at cost, write "C" on line 8, immediately before the amount column; if at cost or market, whichever is lower, write "Cor M."

Other business deductions.—Do not include cost of business equipment or furniture, expenditures for permanent improvements to property, or living and family expenses. Do not deduct interest on your own investment in your business, or salary or wages for your own services or the services of your family, unless these items are included as income in Schedule B or G.

Rent.—Report here rent for business property (not including rent for dwelling you occupy).

Interest.—Report here interest on business indebtedness, including indebtedness incurred to purchase or carry business property.

Taxes.—Report here only taxes on business property or for carrying on business. Do not include taxes assessed against local benefits of a kind tending to increase the value of the property assessed, as for paving, sewers, etc., nor Federal income taxes.

Repairs, wear and tear, obsolescence, and property losses.—Report here (a) ordinary repairs required to keep property in usable condition, (b) depreciation during the year on business property only to the extent not offset by repairs, replacements, or losses claimed as deductions in this or previous returns, (c) reasonable allowance for obsolescence (if any) of business property for which no deduction has been claimed elsewhere in this return or in any previous return, and (d) losses of business property by fire, storm, or other casualty, or theft, not compensated for by insurance or otherwise and not made good by repairs or replacements claimed as deductions. Explain these deductions in table at foot of page 2 of return.

Any losses of property not used in your business, such as your dwelling or household furniture, should be reported in Schedule I.

The amount claimed for wear and tear or depreciation should not exceed the original cost of the property (or its value March 1, 1913, if acquired before that date) divided by its total estimated life in years. When the amount of depreciation allowed equals the cost of the property (or its value March 1, 1913), no further claim should be made.

Do not claim any deduction for depreciation in the value of a building occupied by the owner as his dwelling, or of other property held for personal use. Do not claim any deduction for depreciation of real estate (exclusive of improvements thereon), nor for depreciation of stocks, bonds, and other securities.

Do not claim depreciation or losses of articles that have been taken into your inventory at a figure reflecting the reduction in value.

Depreciation of patents, copyrights, etc., and depletion of mines, etc.—If you wish to claim a deduction on account of depreciation in the value of patents, copyrights, franchises, and other legal privileges, or on account of depletion of mines and oil and gas wells, see the income and profits tax regulations.

Bad debts.—Report only debts which you have ascertained to be worthless and have charged off during the year.

A bad debt offsetting income accrued since March 1, 1913, will not be allowed as a deduction unless the amount was reflected in the income reported for the year in which the debt was created.

State under "Explanation of deductions," at the foot of the page, how the debts were ascertained to be worthless, or if the deduction is based on a reserve, state specifically the basis on which such reserve has been computed. Insolvency of the debtor, inability to collect by legal proceedings, or inability of debtor to pay, ascertained by a mercantile agency, would be a sufficient indication of worthlessness.

If at any future time a debt charged off as worthless and allowed as a deduction is collected, the amount collected must be returned as income.

Unpaid debts are not deductible if made good by recovery of property sold or retention of property pledged.

Bad debts arising out of personal loans should be reported in Schedule I.

Other expenses.—Do not include your personal exemption here. This is to be reported in Item 26.

Net loss.—If the net cost of goods sold plus other business deduction is in excess of the total amount of sales and income from business or professional services, report the difference as a loss by using red ink or a minus sign.

B. INCOME FROM SALARIES, COMMISSIONS, BONUSES, DIRECTOR'S FEES, AND PENSIONS.

If salary, wages, or other compensation was at the rate of $1,000 or more per annum, report it on a separate line, together with the occupation or position and employer's name and address. All other income from salaries, wages, commissions, etc., at a rate less than $1,000 per annum should be reported on a single line.

Do not report here pay, not exceeding $3,500, for active service in the Army or Navy (see Instruction III, paragraph 1, on the other side of this sheet). Report such pay in table II, page 1 of the return.

Explain deductions in the space at the foot of page 2 of the return.

C. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND ESTATES AND TRUSTS.

Report your share (whether distributed or not) in the profits of the partnership or personal service corporation or in the income of the estate or trust (if placed to your credit), not including the part of such share that consisted of dividends on stock of ordinary corporations (to be included in Item K (a)), interest on obligations of the United States (see table 13, page 1 of the return, and instructions under K (b), below), or (in the case of estates and trusts) interest on corporation bonds contained in a tax-free covenant, upon which a tax of 2 per cent was paid (or will be paid) by the debtor corporation (to be included in Item F).

Report in Schedule B salary received from partnership or personal service corporation.

Apportionment of partnership income between years.—If you derived income from a partnership whose fiscal year differed from the calendar year, assign to 1917 as many twelfths of your share of the partnership's income (except stock dividends and Liberty Bond interest, which should be apportioned through the partnership) as the number of months of the partnership's fiscal year that fell in the calendar year 1917. Assign to 1918 the remainder of your share of the partnership's income, except stock dividends and Liberty Bond interest, which should be apportioned as provided in instructions under K (a) and K (b) below.

D. PROFIT FROM SALE OF LAND, BUILDINGS, STOCKS, BONDS, AND OTHER PROPERTY.

Use this schedule for all sales of real estate, and for sales of other property that you did not deal in as a business.

If the profits or losses on sales made through any one broker aggregated $1,000 or more, report the transactions on a separate line with the name and address of the broker.

Kind of property.—Describe the property as definitely as you can in a word or two, as "farm," "house," "lot," "stocks," "bonds."

Sale price.—State the actual consideration or price, or, in case of an exchange, the fair market value of the property received.

Cost.—Enter the original cost of the property or, if it was acquired before March 1, 1913, its fair market value on that date. Expenses incidental to the purchase may be included in the cost if never claimed in income-tax returns as deductions from income. Enter in column 7 the amount of wear and tear, obsolescence, or depletion sustained since March 1, 1913 (or since date of acquisition if subsequent to March 1, 1913). (This is a deduction from cost, though treated for convenience as an addition to the sale price.)

Losses.—If the total of columns 5 and 6 is in excess of the total of columns 4 and 7, report the difference as a loss by using red ink or a minus sign.

E. INCOME FROM RENTS AND ROYALTIES.

Kind of property.—Describe briefly, as in D.

Amount of rent.—If you accepted crops or other property in lieu of cash rent, report the income as though the rent had been paid in cash.

Repairs, wear and tear, obsolescence, depletion, and property losses.—See instructions for Schedule A, above. Explain in table at foot of page 2 of the return.

Other expenses and losses.—Report taxes on rented or leased property and interest on indebtedness incurred or continued to purchase or carry it. Do not include taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

F. INTEREST ON CORPORATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH TAX OF 2% WAS PAID BY DEBTOR CORPORATION.

This item should include all interest received directly or through fiduciaries on bonds of corporations organized or doing business in the United States, containing a clause by which the debtor corporation agrees to pay the interest without any deduction for taxes, provided exemption from withholding was not claimed by the owner of the bonds. If exemption was claimed, the interest received must be reported in G. (The amount of tax paid by the debtor corporation is treated as a credit against the tax due. See Item 39, page 1 of the return.)

G. OTHER INCOME (NOT INCLUDING DIVIDENDS, OR INTEREST ON OBLIGATIONS OF THE UNITED STATES).

Report in this schedule interest on bank deposits, notes, mortgages, etc., and all other income not reported in Schedules A to F, except K (a) dividends from corporations organized or doing business in the United States, which should be reported as Item K (a); (b) taxable interest on obligations of the United States, which should be reported as Item K (b); (c) receipts exempt from tax, as stated in Instruction III on the other side of this sheet; (d) partnership profits and stock dividends taxable at prior year rates (see items 12 and 14, page 1 of return).

State separately income from each source.

If you received any interest on bonds of foreign countries or corporations, or any dividends on stock of foreign corporations, submit with the return a schedule showing (a) name of country; (b) kind of obligations (whether national, state, or municipal obligations, or bonds or stocks of corporations); (c) amount of principal; and (d) amount of interest or dividends.

Deductions.—Explain deductions in the space at the foot of page 2 of the return.

I. GENERAL DEDUCTIONS.

Interest.—Report here interest paid on personal indebtedness as distinguished from business indebtedness (which should be reported under A, B, or G above). Do not include interest on indebtedness incurred for the purchase of bonds and other obligations, the interest on which is exempt from tax, except interest on indebtedness incurred to purchase or carry obligations of the United States. See Instruction III, page 1, for a list of obligations the interest on which is exempt.

Taxes.—Report here taxes on your dwelling and household property, not including those assessed against local benefits of a kind tending to increase the value of the property. Do not include Federal income taxes, or estate or inheritance taxes.

Losses.—Report here losses of property not connected with your trade, business, or profession, sustained during the year from fire, storm, shipwreck, or other casualty, or from theft, which were not compensated for by insurance or otherwise. Explain such losses in table at foot of page 2 of return.

Contributions.—Report here only contributions made within the year to corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, and contributions to the special fund for vocational rehabilitation. The total amount of contributions to be entered here must not exceed 15 per cent of the net income computed without the benefit of this deduction. Therefore, if Item 4, Schedule I, exceeds the sum of your total net income (Item 24) and Item 4, then Item 4 must be reduced to 15 per cent of such sum and your total net income must be recalculated accordingly.

Enter under "Explanation of deductions," at the foot of page 2 of the return, the name and address of each corporation to which you made contributions claimed as deductions, and the amount paid to each.

Other deductions.—Bad debts arising out of personal loans may be reported here. (See instructions for Schedule A, above.)

K (a). DIVIDENDS.

Stock dividends which were paid out of profits or surplus accumulated by the distributing corporation prior to the year for which this return is made but not prior to March 1, 1913, should not be included in Item K (a), but should be reported as item 12, a, b, and c, Item 14b, col. 4, and Items 14c and 14d on page 1 of the return.

Profits of personal service corporations should be included in C (except such part thereof as consisted of dividends of ordinary corporations and interest on obligations of the United States issued since September 1, 1917).

K (b). INTEREST ON OBLIGATIONS OF THE UNITED STATES ISSUED SINCE SEPTEMBER 1, 1917.

1. In order to ascertain the amount to be entered under K(b), refer first to Table 13 on page 1 of the return.

2. If any amount entered in column 6 of that table exceeds the maximum exemption for the same class of obligations (stated in column 7), then you must attach to the return a schedule showing in separate columns the following information for that class of obligations:

(a) Periods during which your holdings of that class of obligations remained unchanged (including your share of the holdings of partnerships, personal service corporations, estates, and trusts, and also any holdings the interest on which you reported as income for 1917, and on which you claimed exemption in your 1917 return).

(b) Amount of obligations held by you individually during each such period.

(c) Your share of the holdings of each partnership, personal service corporation, estate, and trust during each such period.

(d) Totals of amounts in columns b and c.

(e) Amount by which such amount entered in column d exceeds the maximum exemption for that class of obligations.

(f) Interest derived from each amount of principal stated in column e.

3. If any part of the interest reported in Table 13 was received through a partnership having a fiscal year falling partly in the calendar year 1917, the taxable interest received through such partnership should be calculated in a separate column g of the schedule. Enter in this column, for each period specified in column a, either (1) the amount entered in column f or (2) the interest on your share of the partnership's holdings (shown in column c), whichever is the smaller.

4. Enter as Item K (b), on page 2 of the return, the total of column f for all classes of obligations, less as many twelfths of the total of column g (if any) as the number of months of the partnership's fiscal year that fell in 1917. Enter the amount deducted as Item 14b (column 6) on page 1 of the return.

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If the profits or losses on sales made through any one broker aggregated $1,000 or more, report the transactions on a separate line with the name and address of the broker.

Kind of property.—Describe the property as definitely as you can in a word or two, as "farm," "house," "lot," "stocks," "bonds."

Sale price.—State the actual consideration or price, or, in case of an exchange, the fair market value of the property received.

be included in the cost or never claimed in income-tax returns as deductions from income. Enter in column 7 the amount of wear and tear, obsolescence, or depletion sustained since March 1, 1913 (or since date of acquisition if subsequent to March 1, 1913). (This is a deduction from cost, though treated for convenience as an addition to the sale price.)

Losses.—If the total of columns 5 and 6 is in excess of the total of columns 4 and 7, report the difference as a loss by using red ink or a minus sign.

E. INCOME FROM RENTS AND ROYALTIES.

Kind of property.—Describe briefly, as in D.

Amount of rent.—If you accepted crops or other property in lieu of cash rent, report the income as though the rent had been paid in cash.

Repairs, wear and tear, obsolescence, depletion, and property losses.—See instructions for Schedule A, above. Explain in table at foot of page 2 of the return.

Other expenses and losses.—Report taxes on rented or leased property and interest on indebtedness incurred or continued to purchase or carry it. Do not include taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

F. INTEREST ON CORPORATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH TAX OF 2% WAS PAID BY DEBTOR CORPORATION.

This item should include all interest received directly or through fiduciaries on bonds of corporations organized or doing business in the United States, containing a clause by which the debtor corporation agrees to pay the interest without any deduction for taxes, provided exemption from withholding was not claimed by the owner of the bonds. If exemption was claimed, the interest received must be reported in G. (The amount of tax paid by the debtor corporation is treated as a credit against the tax due. See Item 39, page 1 of the return.)

G. OTHER INCOME (NOT INCLUDING DIVIDENDS, OR INTEREST ON OBLIGATIONS OF THE UNITED STATES).

Report in this schedule interest on bank deposits, notes, mortgages, etc., and all other income not reported in Schedules A to F, except (a) dividends from corporations organized or doing business in the United States, which should be reported as Item K(a); (b) taxable interest on obligations of the United States, which should be reported as Item K(b); (c) receipts exempt from tax, as stated in Instruction III on the other side of this sheet; (d) partnership profits and stock dividends taxable at prior year rates (see items 12 and 14, page 1 of return).

State separately income from each source.

If you received any interest on bonds of foreign countries or corporations, or any dividends on stock of foreign corporations, submit with the return a schedule showing (a) name of country; (b) kind of obligations (whether national, state, or municipal obligations, or bonds or stocks of corporations); (c) amount of principal; and (d) amount of interest or dividends.

Deductions.—Explain deductions in the space at the foot of page 2 of the return.

I. GENERAL DEDUCTIONS.

Interest.—Report here interest paid on personal indebtedness as distinguished from business indebtedness (which should be reported under A, E, or G above). Do not include interest on indebtedness incurred for the purchase of bonds and other obligations, the interest on which is exempt from tax, except interest on indebtedness incurred to purchase or carry obligations of the United States. See Instruction III, page 1, for a list of obligations the interest on which is exempt.

Taxes.—Report here taxes on your dwelling and household property, not including those assessed against local benefits of a kind tending to increase the value of the property. Do not include Federal income taxes, or estate or inheritance taxes.

Losses.—Report here losses of property not connected with your trade, business, or profession, sustained during the year from fire, storm, shipwreck, or other casualty, or from theft, which were not compensated for by insurance or otherwise. Explain such losses in table at foot of page 2 of return.

Contributions.—Report here only contributions made within the year to corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, and contributions to the special fund for vocational rehabilitation. The total amount of contributions to be entered here must not exceed 15 per cent of the net income computed without the benefit of this deduction. Therefore, if Item 4, Schedule I, exceeds the sum of your total net income (Item 24) and Item 4, then Item 4 must be reduced to 15 per cent of such sum and your total net income must be recalculated accordingly.

Enter under "Explanation of deductions," at the foot of page 2 of the return, the name and address of each corporation to which you made contributions claimed as deductions, and the amount paid to each.

Other deductions.—Bad debts arising out of personal loans may be reported here. (See instructions for Schedule A, above.)

K (a). DIVIDENDS.

Stock dividends which were paid out of profits or surplus accumulated by the distributing corporation prior to the year for which this return is made but not prior to March 1, 1913, should not be included in Item K (a), but should be reported as Item 12, a, b, and c, Item 14b, col. 4, and Items 14c and 14d on page 1 of the return.

Profits of personal service corporations should be included in C (except such part thereof as consisted of dividends of ordinary corporations and interest on obligations of the United States issued since September 1, 1917).

K (b). INTEREST ON OBLIGATIONS OF THE UNITED STATES ISSUED SINCE SEPTEMBER 1, 1917.

1. In order to ascertain the amount to be entered under K(b), refer first to Table 13 on page 1 of the return.

2. If any amount entered in column 6 of that table exceeds the maximum exemption for the same class of obligations (stated in column 7), then you must attach to the return a schedule showing in separate columns the following information for that class of obligations:

(a) Periods during which your holdings of that class of obligations remained unchanged (including your share of the holdings of partnerships, personal service corporations, estates, and trusts, and also any holdings the interest on which you reported as income for 1917, and on which you claimed exemption in your 1917 return).

(b) Amount of obligations held by you individually during each such period.

(c) Your share of the holdings of each partnership, personal service corporation, estate, and trust during each such period.

(d) Totals of amounts in columns b and c.

(e) Amount by which each amount entered in column d exceeds the maximum exemption for that class of obligations.

(f) Interest derived from each amount of principal stated in column e.

3. If any part of the interest reported in Table 13 was received through a partnership having a fiscal year falling partly in the calendar year 1917, the taxable interest received through such partnership should be calculated in a separate column g of the schedule. Enter in this column, for each period specified in column a, either (1) the amount entered in column f or (2) the interest on your share of the partnership's holdings (shown in column c), whichever is the smaller.

4. Enter as Item K (b), on page 2 of the return, the total of column f for all classes of obligations, less as many twelfths of the total of column g (if any) as the number of months of the partnership's fiscal year that fell in 1917. Enter the amount deducted as Item 14b (column 6) on page 1 of the return.

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Fill work sheet first

DELIVER OR SEND THIS RETURN WITH PAYMENT TO COLLECTOR OF INTERNAL REVENUE ON OR BEFORE MARCH 15, 1919

DETACH AND KEEP WORK SHEET AND INSTRUCTION SHEET

Page 1 of Return

Form 1040A.—UNITED STATES INTERNAL REVENUE SERVICE

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF NOT MORE THAN $5,000

For Calendar Year 1918

PRINT NAME AND ADDRESS PLAINLY BELOW

.....

.....

.....

Do not write in this space

FIRST PAYMENT

$

(Cashier's Stamp.)

CASH CHECK M. O.

Examined by

1. Did you make a return for 1917? .....
2. If so, what address did you give on that return? .....
3. To what collector's office was it sent? .....
(Give district or city and State.)
4. Give number, if any, assigned to you for 1917 if it does not appear in address at head of return .....
5. Were you in 1918 married and living with wife (or husband)? .....
6. If not, were you the head of a family as defined in instructions under "Personal Exemption?" .....
7. How many dependent persons under 18 (or mentally or physically defective) received their chief support from you during 1918? .....
8. If you claim any additional exemption on account of dependent persons other than your children, what was their relationship to you? .....
9. Write "R" if this return shows income received, or "A" if it shows income accrued .....
10. Did your wife (or husband) or minor child make a separate return? .....
(If so, give name and address thereon.)
11. Did you or your wife (or husband) or dependent minor children receive any interest on U. S. Liberty Bonds, or any salary not reported elsewhere in this return or in a separate return? .....
(If so, give sources and amounts.)
12. Enter name and address of each organization to which you made contributions claimed as deductions, and amount paid to each.

13. Enter in this table details concerning repairs, wear and tear, and property losses, claimed as deductions in Schedules A, E, and I on page 2 of return (see instructions):

1. Refer to "A," "E," or "I."	2. Kind of property. (If buildings, state also material of which constructed.)	3. Year acquired.	4. Cost of property (or market value March 1, 1913).	5. Repairs not offset by claims for wear and tear or losses.	Wear and tear (depreciation) and depletion charged off— 6. Rate.	7. Amount previous years.	8. Amount this year.	Losses not compensated for by insurance. 9. Cause of loss.	10. Amount of loss.
			$	$		$	$		$

CALCULATION OF TAX

Do not write here.			Do not write here.		
	M. Net income shown on page 2, Item J	$		P. Tax due (6% on amount of Item O)	$
	N. Less personal exemption (see Instruction VI)			Q. Less normal tax of 2% on Item F	
	O. Balance (income taxable at 6%)	$		R. Balance of tax due	$
NOTE.—If the amount on line O exceeds $4,000, the excess is taxable at 12%, and your return should be made on Form 1040.				S. Amount of tax paid on submission of return	$

AFFIDAVIT

I swear (or affirm) that this return, to the best of my knowledge and belief, is a true and complete statement of all taxable gains, profits, and income received by or accrued to me (or the person for whom this return is made) during the year 1918, and that all deductions entered or claimed herein are allowable under the law.

.....

(If return is made by agent, the reason therefor must be stated on this line.)

Sworn to and subscribed before me this ..... day of ....., 1919.

.....
(Signature of individual or agent.)

.....
(Signature of officer administering oath.) (Title.)

.....
(Address of individual or agent.)

DETACH RETURN HERE AND SEND IT TO COLLECTOR OF INTERNAL REVENUE AT .....

Page 1 of Form 1040A

RETURN OF TAXABLE INCOME

(Including income of wife (or husband) and dependent minor children, unless reported in separate returns (see instruction I))

A. INCOME FROM BUSINESS OR PROFESSION.

1. Kind of business _____ 2. Business address _____

3. Total sales and income from business or professional services _____ $_____

COST OF GOODS SOLD:		OTHER BUSINESS DEDUCTIONS:	
4. Labor	$_____	12. Salaries and wages not reported as "Labor" under "Cost of Goods Sold"	$_____
5. Material and supplies	_____	13. Rent	_____
6. Merchandise bought for sale	_____	14. Interest on business indebtedness	_____
7. Other costs	_____	15. Taxes on business and business property	_____
8. Plus inventories at beginning of year	_____	16. Repairs, wear and tear, and property losses	_____
9. TOTAL	$_____	17. Bad debts arising from sales	_____
10. Less inventories at end of year	_____	18. Other expenses	_____
11. NET COST OF GOODS SOLD	$_____	19. TOTAL OTHER BUSINESS DEDUCTIONS	$_____

20. NET COST OF GOODS SOLD PLUS TOTAL OTHER BUSINESS DEDUCTIONS _____ $_____

21. NET INCOME FROM BUSINESS OR PROFESSION _____ $_____

B. INCOME FROM SALARIES, WAGES, COMMISSIONS, BONUSES, DIRECTOR'S FEES, AND PENSIONS.

1. By whom received.	2. Occupation.	3. Name and address of employer.	4. Gross income.	5. Deductions, if any.
			$_____	$_____
			_____	_____
			_____	_____

NET INCOME FROM SALARIES, ETC. (total of column 4 minus total of column 5) _____ $_____ $_____ $_____

C. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND ESTATES AND TRUSTS (not including amounts reported under F and K).

(State name and address of partnership, etc.) _____ $_____

D. PROFIT FROM SALE OF LAND, BUILDINGS, STOCKS, BONDS, AND OTHER PROPERTY.

1. Kind of property.	2. Year acquired.	3. Name of purchaser or broker.	4. Sale price.	5. Original cost or market value March 1, 1913.	6. Cost of subsequent improvements, if any.	7. Depreciation subsequently sustained.
			$_____	$_____	$_____	$_____
			_____	_____	_____	_____
			_____	_____	_____	_____

NET PROFIT FROM SALES (total of cols. 4 and 7 minus total of cols. 5 and 6) _____ $_____ $_____ $_____ $_____ $_____

E. INCOME FROM RENTS AND ROYALTIES.

1. Kind of property.	2. Name and address of tenant or lessee.	3. Cash or equivalent received.	4. Wear, tear, repairs, and property losses.	5. Other expenses and losses.
		$_____	$_____	$_____
		_____	_____	_____
		_____	_____	_____

NET INCOME FROM RENTS AND ROYALTIES (total of col. 3 minus total of cols. 4 and 5) $_____ $_____ $_____ $_____

F. INTEREST ON CORPORATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH A TAX OF 2% WAS PAID BY DEBTOR CORPORATION

(including such interest received through fiduciaries) _____ $_____

G. OTHER INCOME (not including dividends) (State each source separately).

	1. Cash received.	2. Deductions, if any.
	$_____	$_____
	_____	_____
	_____	_____

NET TOTAL (total of column 1 minus total of column 2) _____ $_____ $_____ $_____

H. TOTAL NET INCOME FROM ABOVE SOURCES _____ $_____

I. GENERAL DEDUCTIONS NOT INCLUDED ABOVE.

1. Interest paid on indebtedness	$_____	3. Losses by fire, storm, or casualty not claimed above.	$_____	5. Other deductions, if any	$_____
2. Taxes paid	_____	4. Contributions	_____	TOTAL	$_____

J. **Total net income on which normal tax is to be calculated** (H minus I) (Enter as Item M, page 1) _____ $_____

K. **Dividends on stock of corporations organized or doing business in the United States** (including dividends received through partnerships, personal service corporations, and fiduciaries) _____ _____

L. **Total net income** (if this amount is over $5,000, make your return on Form 1040) _____ $_____

DETACH THE RETURN (CONTAINING AFFIDAVIT) AND DELIVER OR SEND IT WITH PAYMENT TO COLLECTOR OF INTERNAL REVENUE ON OR BEFORE MARCH 15, 1919

KEEP THIS WORK SHEET AND THE INSTRUCTION SHEET

Form 1040A.—UNITED STATES INTERNAL REVENUE SERVICE

WORK SHEET FOR INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF NOT MORE THAN $5,000

For Calendar Year 1918

IF YOU NEED ASSISTANCE GO TO A DEPUTY COLLECTOR OR TO THE COLLECTOR'S OFFICE BUT FIRST READ INSTRUCTIONS AND FILL OUT THIS SHEET (FACE AND BACK) IN PENCIL AS WELL AS YOU CAN

RETAIN THIS SHEET AND INSTRUCTION SHEET

1. Did you make a return for 1917? .....
2. If so, what address did you give on that return? .....
3. To what collector's office was it sent? .....
4. Give number, if any, assigned to you for 1917 if it does not appear in address at head of return .....

(Give district or city and State.)

5. Were you in 1918 married and living with wife (or husband)? .....
6. If not, were you the head of a family as defined in instructions under "Personal Exemption?" .....
7. How many dependent persons under 18 (or mentally or physically defective) received their chief support from you during 1918? .....
8. If you claim any additional exemption on account of dependent persons other than your children, what was their relationship to you? .....
9. Write "R" if this return shows income received, or "A" if it shows income accrued .....

10. Did your wife (or husband) or minor child make a separate return? .....
(If so, give name and address thereon.)

11. Did you or your wife (or husband) or dependent minor children receive any interest on U. S. Liberty Bonds, or any salary not reported elsewhere in this return or in a separate return? .....
(If so, give sources and amounts.)

12. Enter name and address of each organization to which you made contributions claimed as deductions, and amount paid to each.

13. Enter in this table details concerning repairs, wear and tear, and property losses claimed as deductions in Schedules A, E, and I on page 2 of return (see instructions):

1. Refer to "A," "E," or "I."	2. Kind of property. (If buildings, state also material of which constructed.)	3. Year acquired.	4. Cost of property (or market value March 1, 1913).	5. Repairs not offset by claims for wear and tear or losses.	Wear and tear (depreciation) and depletion charged off— 6. Rate.	7. Amount previous years.	8. Amount this year.	Losses not compensated for by insurance. 9. Cause of loss.	10. Amount of loss.
			$	$		$	$		$

CALCULATION OF TAX

M. Net income shown on page 2, Item J	$	P. Tax due (6% on amount of Item O)	$
N. Less personal exemption (see Instruction VI)		Q. Less normal tax of 2% on amount of Item F	
O. Balance (income taxable at 6%)	$	R. Balance of tax due	$
NOTE.—If the amount on line O exceeds $4,000, the excess is taxable at 12%, and your return should be made on Form 1040.		S. Amount of tax paid on submission of return	$

TAXPAYER'S RECORD OF PAYMENTS

PAYMENT.	AMOUNT.	DATE.	CHECK OR M. O. No.	BANK OR OFFICE OF ISSUE.
First	$			
Second	$			
Third	$			
Fourth	$			

Page 2 of Work Sheet. **TAXPAYER'S WORK SHEET FOR RETURN OF TAXABLE INCOME** (Including income of wife (or husband) and dependent minor children, unless reported in separate returns (see instructions))

A. INCOME FROM BUSINESS OR PROFESSION.

1. Kind of business _____ 2. Business address _____

3. Total sales and income from business or professional services _____ $_____

COST OF GOODS SOLD:		OTHER BUSINESS DEDUCTIONS:	
4. Labor	$_____	12. Salaries and wages not reported as "Labor" under "Cost of Goods Sold"	$_____
5. Material and supplies	_____	13. Rent	_____
6. Merchandise bought for sale	_____	14. Interest on business indebtedness	_____
7. Other costs	_____	15. Taxes on business and business property	_____
8. Plus inventories at beginning of year	_____	16. Repairs, wear and tear, and property losses	_____
9. TOTAL	$_____	17. Bad debts arising from sales	_____
10. Less inventories at end of year	_____	18. Other expenses	_____
11. NET COST OF GOODS SOLD	$_____	19. TOTAL OTHER BUSINESS DEDUCTIONS	$_____

20. NET COST OF GOODS SOLD PLUS TOTAL OTHER BUSINESS DEDUCTIONS _____ $_____

21. NET INCOME FROM BUSINESS OR PROFESSION _____ $_____

B. INCOME FROM SALARIES, WAGES, COMMISSIONS, BONUSES, DIRECTOR'S FEES, AND PENSIONS.

1. By whom received.	2. Occupation.	3. Name and address of employer.	4. Gross income.	5. Deductions, if any.
			$_____	$_____
			_____	_____
			_____	_____

NET INCOME FROM SALARIES, ETC. (total of column 4 minus total of column 5) _____ $_____ $_____ $_____

C. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND ESTATES AND TRUSTS (not including amounts reported under F and K).

(State name and address of partnership, etc.) _____ $_____

D. PROFIT FROM SALE OF LAND, BUILDINGS, STOCKS, BONDS, AND OTHER PROPERTY.

1. Kind of property.	2. Year acquired.	3. Name of purchaser or broker.	4. Sale price.	5. Original cost or market value March 1, 1913.	6. Cost of subsequent improvements, if any.	7. Depreciation subsequently sustained.
			$_____	$_____	$_____	$_____
			_____	_____	_____	_____
			_____	_____	_____	_____

NET PROFIT FROM SALES (total of cols. 4 and 7 minus total of cols. 5 and 6) _____ $_____ $_____ $_____ $_____ $_____

E. INCOME FROM RENTS AND ROYALTIES.

1. Kind of property.	2. Name and address of tenant or lessee.	3. Cash or equivalent received.	4. Wear, tear, repairs, and property losses.	5. Other expenses and losses.
		$_____	$_____	$_____
		_____	_____	_____
		_____	_____	_____

NET INCOME FROM RENTS AND ROYALTIES (total of col. 3 minus total of cols. 4 and 5) _____ $_____ $_____ $_____ $_____

F. INTEREST ON CORPORATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH A TAX OF 2% WAS PAID BY DEBTOR CORPORATION

(including such interest received through fiduciaries) _____ $_____

G. OTHER INCOME (not including dividends) (State each source separately).

	1. Cash received.	2. Deductions, if any.
	$_____	$_____
	_____	_____
	_____	_____

NET TOTAL (total of column 1 minus total of column 2) _____ $_____ $_____ $_____

H. TOTAL NET INCOME FROM ABOVE SOURCES _____ $_____

I. GENERAL DEDUCTIONS NOT INCLUDED ABOVE.

1. Interest paid on indebtedness	$_____	3. Losses by fire, storm, or casualty not claimed above	$_____
2. Taxes paid	_____	4. Contributions	_____
5. Other deductions, if any	$_____	TOTAL	$_____

J. Total net income on which normal tax is to be calculated (H minus I) (Enter as Item M, page 1) _____ $_____

K. Dividends on stock of corporations organized or doing business in the United States (including dividends received through partnerships, personal service corporations, and fiduciaries) _____ _____

L. Total net income (if this amount is over $5,000, make your return on Form 1040) _____ $_____

Page 4 of Form 1040A

INSTRUCTIONS FOR FILLING INDIVIDUAL INCOME TAX RETURN FOR NET INCOMES OF NOT MORE THAN $5,000

I. HOW TO DECIDE WHETHER TO MAKE A RETURN.

1. Calculate your net income by filling in page 2 of the work sheet according to page 2 of the instructions.

2. Add the net income of your wife (or husband) and dependent minor children, if any, except as provided in paragraph 4.

3. The total family income, calculated in accordance with paragraphs 1 and 2, must be reported, either in your return or in a separate return by wife (or husband), if it equals or exceeds—

(a) $2,000 if you are married and live with your wife (or husband).

(b) $1,000 if you are not married or do not live with your wife (or husband).

4. Income of a minor or incompetent, if derived from a separate estate under control of a guardian, trustee, or other fiduciary, must be reported by his guardian or other legal representative.

II. ACCRUED OR RECEIVED INCOME.

1. If you keep books showing income accrued and expenses incurred during the year, make your return from your books, but do not fail to include all your income even if it is not entered in your books.

2. If you do not keep books showing income accrued and expenses incurred, report income received and expenses paid.

3. If you report income accrued, you must include all income that accrued in 1917 but was not received until 1918, unless it was reported in last year's return.

4. If you report income received, you must include all income constructively received, as bank interest credited to your account.

III. RECEIPTS EXEMPT FROM TAX.

The following classes of receipts are exempt from income tax, and need not be reported on page 2 of the return:

1. Pay, not exceeding $3,500, for active services in the military and naval forces of the United States.

2. Gifts (not made as a consideration for service rendered) and money and property acquired under a will or by inheritance (but the income derived from money or property received by gift, will, or inheritance is taxable and must be reported).

3. Interest on bonds and other obligations of the United States issued before September 1, 1917, and on such bonds and other obligations issued since that date, provided your holdings do not exceed the exemptions allowed by law.

4. Interest on bonds and other obligations of United States possessions (Philippines, Porto Rico, etc.).

5. Interest on bonds and other obligations of States, territories, political subdivisions thereof (such as cities, counties, and townships), and the District of Columbia.

6. Interest on Federal Farm Loan bonds.

7. Proceeds of life insurance policies paid on the death of the insured.

8. Amounts received by the insured under life insurance, endowment, and annuity contracts, provided such payments do not exceed the premiums paid in. The amount by which the total payments that have been received exceed the total premiums paid in is income and must be reported in Schedule G.

9. Amounts received from accident and health insurance and under workman's compensation acts plus the amount of any damages received by suit or agreement on account of injuries or sickness.

IV. FARMER'S INCOME SCHEDULE.

If you are a farmer, get from the collector and fill out a "Schedule of Farm Income and Expenses." Transfer the net farm income to line 21 of Schedule A of the return. Report income from salaries, rents, interest, sales of property, etc., in Schedules B to G of the return. Send your Schedule of Farm Income and Expenses with the return to the collector.

V. PERIOD TO BE COVERED BY RETURN.

1. You must report your net income for the calendar year 1918, except under the conditions stated in paragraph 2.

2. If you are engaged in business and keep books of account which are regularly closed each year at the end of some month other than December to determine your annual profit or loss, you may, after obtaining the collector's approval, make a return covering the period from January 1, 1918, to the date on which you closed your books, and thereafter for each period of 12 months.

3. If you make a return for a part of the calendar year 1918, your personal exemption shall be as many twelfths of the amount that would be allowed for a full year as there are months in the period covered by the return.

4. The dates on which the period covered by the return begins and ends, if other than the calendar year 1918, must be plainly stated at the head of the return; answers to questions 5, 6, and 7 must be given for that period; and the affidavit must be changed accordingly.

VI. PERSONAL AND FAMILY EXEMPTION.

1. If you were married and lived with your wife (or husband) or were head of a family in 1918, you may subtract from your net income, before calculating your tax, a family exemption of $2,000 plus $200 for each person under 18 (or mentally or physically defective) who received his chief support from you. If husband and wife make separate returns, this exemption may be claimed by either (but not by both) or may be divided between them.

2. If you were not married or did not live with wife (or husband) and were not head of a family in 1918, you are entitled to a personal exemption of $1,000 plus $200 for each dependent person under 18 (or mentally or physically defective) who received his chief support from you.

3. If you were entitled to any of the foregoing exemptions during a part of the year only, you may claim as many twelfths of the exemptions stated as there were months in such part of the year. Any part of a month may be counted as a month.

4. The personal or family exemption must be reported on line N, page 1, of the return, and must be supported by answers to questions 5, 6, 7, and 8.

5. A "head of family" is a person who is the chief support of one or more persons living in his household, who are closely related to him (or her) by blood, marriage, or adoption.

VII. WHEN TO USE FORM 1040 INSTEAD OF THIS FORM.

You must make your return on Form 1040—

(a) If your net income is over $5,000.

(b) If the net income reported in this return exceeds $4,000 and the entire family exemption has been claimed in a separate return made by wife (or husband).

(c) If this form does not provide for all the facts you have to report (as, for example, if you receive income from a partnership or personal service corporation with a fiscal year falling partly in 1917 and partly in 1918).

VIII. AFFIDAVIT.

1. The affidavit must be executed by the person whose income is reported unless he is a minor or incompetent or unless he is ill, absent from the country, or otherwise incapacitated, in which case the legal representative or agent may execute the affidavit.

2. The oath will be administered without charge by any collector or deputy collector of internal revenue, or (if you are in the military or naval service of the United States) by any military or naval officer who is authorized to administer oaths for purposes of military or naval justice and administration. If an internal revenue officer is not available, the return should be sworn to before a notary public, justice of the peace, or other person authorized to administer oaths.

IX. WHEN AND WHERE THE RETURN SHOULD BE SENT.

Send your return to the collector of internal revenue for the district in which you live or have your place of business so that it will reach him on or before March 15, 1919. If the address of the collector is not printed on the return and you do not know it, ask at the post office or bank.

X. WHEN AND TO WHOM THE TAX MUST BE PAID.

1. The tax should be paid, if possible, by sending or bringing with the return a check or money order drawn to the order of "Collector of Internal Revenue at [insert name of city and State]."

2. Do not send cash through the mail, or pay it in person except at the office of the collector or a regularly established internal revenue stamp office.

3. At least one-fourth of the tax is due at the same time that this return is due.

4. An additional amount sufficient to bring the total payments up to one-half of the tax is due on or before June 15, 1919.

5. An additional amount sufficient to bring the total payments up to three-fourths of the tax is due on or before September 15, 1919.

6. The entire remainder of the tax is due on or before December 15, 1919.

7. If any payment is not made when due, a penalty of 5 per cent of the amount due but unpaid will be incurred. The entire unpaid balance of the tax will also become due 10 days after demand therefor by the collector.

8. If you pay in cash, do not fail to get a receipt at the time of payment. If you pay by check or money order, your canceled check or your money order receipt will serve as a receipt.

XI. PENALTIES.

For Making False or Fraudulent Return.

Not exceeding $10,000 or not exceeding one year's imprisonment; or both, in the discretion of the court, and, in addition, 50 per cent of the tax evaded.

For Failing to Make Return on Time

Not more than $1,000, and, in addition, 25 per cent of the amount of tax due.

For Failing to Pay Tax When Due.

Five per cent of the amount unpaid, plus 1 per cent interest for each full month during which it remains unpaid.

INSTRUCTIONS FOR FILLING IN TAXABLE INCOME

A. INCOME FROM BUSINESS OR PROFESSION.

Report here income from—

(a) Sale of merchandise, or of products of manufacturing, construction, mining, and agriculture. (For farm income see Instruction IV on the back of this sheet.)

(b) Business service, such as transportation, storage, laundering, hotel and restaurant service, livery and garage service, etc., if you own the business. If you are engaged in the business as an employee, report your salary or wages in Schedule B.

(c) A profession, such as medicine, law, or dentistry, if you practice it on your own account. If you are employed on a salary, report your salary in Schedule B.

In general, report in Schedule A any income in the earning of which you incur expenses for labor, rent, etc. Do not report here partnership profits or profits of personal service corporations, which should be entered under C, or dividends from other corporations, which should be entered under K.

If you are a farmer (or a farm owner renting your farm to another person on shares), enter on line 21 your net income from farming, as shown by your "Schedule of Farm Income and Expenses."

Kind of business.—Enter "grocery," "retail clothing," "drug store," "laundry," "doctor," "lawyer," etc.

If you keep books showing income accrued, report such income instead of cash received, and report expenses incurred instead of expenses paid.

Income received from sale of lands, buildings, equipment, stocks, bonds, and other property not dealt in as a business should be reported under D.

Total sales and income from business or profession.—Report the total amount derived from sales, less any discounts or allowances from the sale price.

Other business deductions.—Do not include cost of business equipment or furniture, expenditures for permanent improvements to property, or living and family expenses. Do not deduct interest on your own investment in your business or salary or wages for your own services or the services of your family, unless these items are included as income in Schedule B or G.

Rent.—Report here rent for business property (not including rent for dwelling you occupy).

Interest.—Report here interest on business indebtedness, including indebtedness incurred to purchase or carry business property.

Taxes.—Report here only taxes on business property or for carrying on business. Do not include taxes assessed against local benefits of a kind tending to increase the value of the property assessed, as for paving, sewers, etc., nor Federal income taxes.

Repairs, wear and tear, and property losses.—Report here (a) ordinary repairs required to keep property in usable condition, (b) depreciation during the year on business property, only to the extent not offset by repairs or losses claimed in this or previous returns, and (c) losses of business property by fire, storm, theft, etc., not compensated for by insurance or otherwise, and for which no claim for insurance is pending. Explain these deductions in table, page 1 of the return, Item 13.

Do not claim depreciation or losses on articles that have been taken into your inventory at a figure reflecting the reduction in value.

Bad debts.—Report here only debts arising from sales that have been reported as income, which have been definitely proved to be worthless and have been charged off within the year.

Other expenses.—Do not include your personal exemption here. This is to be reported as Item N.

Net loss.—If the net cost of goods sold plus other business expenses is in excess of the total amount of sales and income from business or professional services, report the difference as a loss by using red ink or a minus sign.

B. INCOME FROM SALARIES, WAGES, COMMISSIONS, BONUSES, DIRECTOR'S FEES, AND PENSIONS.

If salary, wages, or other compensation received by you, your wife (or husband), or dependent child was at the rate of $1,000 or more per annum, report it on a separate line, together with the occupation or position and employer's name and address. All other income from salaries, wages, commissions, etc., at a rate less than $1,000 per annum should be reported on a single line.

Do not report pay, not exceeding $3,500, for active service in the Army or Navy (see Instructions III, paragraph 1, on the other side of this sheet).

Explain deductions in any convenient blank space on the return. Do not enter your personal exemption here.

C. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND ESTATES AND TRUSTS.

Report your share (whether received or not) in the profits of the partnership or personal service corporation or in the income of estate or trust (if placed to your credit), not including the part of such share that consisted of dividends on stock of ordinary corporations (to be included in Item K), interest on obligations of the United States (see question 11), or (in the case of estates and trusts) interest on corporation bonds containing a tax-free covenant, upon which a tax of 2 per cent was paid (or will be paid) by the debtor corporation (to be included in Item F).

Report in Schedule B salary received from partnership or personal service corporation.

D. PROFIT FROM SALE OF LAND, BUILDINGS, STOCKS, BONDS, AND OTHER PROPERTY.

Use this schedule for all sales of real estate, and for sales of other property that you do not deal in as a business.

Kind of property.—Describe the property as definitely as you can in a word or two, as "farm," "house," "lot," "stocks," "bonds."

Sale price.—State the actual consideration or price, or, in case of an exchange, the fair market value of the property received.

Cost.—Enter the original cost of the property or, if it was acquired before March 1, 1913, its fair market value on that date. Expenses incidental to the purchase may be included in the cost if never claimed in income tax returns as deductions from income. Enter in column 7 the amount of wear and tear (depreciation) or depletion sustained since March 1, 1913 (or since date of acquisition if subsequent to March 1, 1913). (This is a deduction from cost, though treated for convenience as an addition to the sale price.)

Losses.—If the total of columns 5 and 6 is in excess of the total of columns 4 and 7, report the difference as a loss by using red ink or a minus sign.

E. INCOME FROM RENTS AND ROYALTIES.

Kind of property.—Describe briefly, as in D.

Cash or equivalent received.—If a tenant rented your property on a cash rental basis, but paid the rent in crops or other property, report the amount of the rent as income for the year in which you received such crops or other property (unless your return shows income accrued).

Wear, tear, repairs, and property losses.—See Instructions for Schedule A, above. Explain in Item 13, page 1 of the return.

Other expenses and losses.—Report taxes on rented or leased property and interest on indebtedness incurred or continued to purchase or carry it. Do not include taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

F. INTEREST ON CORPORATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH TAX OF 2% WAS PAID BY DEBTOR CORPORATION.

This item should include all interest received directly or through fiduciaries on bonds of corporations organized or doing business in the United States, containing a clause by which the debtor corporation agrees to pay the interest without any deduction for taxes, provided exemption from withholding was not claimed by the owner of the bonds. If exemption was claimed, the interest received must be reported in G. (The amount of tax paid by the debtor corporation is treated as a credit against the tax due. See Item Q, page 1 of the return.)

G. OTHER INCOME (NOT INCLUDING DIVIDENDS).

Report in this schedule interest received on bank deposits, notes, mortgages, etc., and all other income not reported in Schedules A to F, except—

(a) Dividends received from corporations organized or doing business in the United States (see Item K).

(b) Receipts exempt from tax, as stated in Instruction III on the other side of this sheet.

State separately income from each source.

Deductions.—Interest paid on loans secured by bonds may be reported here as an offset to the interest received. Explain deductions in any convenient blank space on the return.

I. GENERAL DEDUCTIONS.

Interest.—Report here interest paid on personal indebtedness as distinguished from business indebtedness (which should be reported under A, E, or G above). Do not include interest on indebtedness incurred for the purchase of bonds and other obligations, the interest on which is exempt from tax (see Instruction III, page 1).

Taxes.—Report here taxes paid on your dwelling and household property, not including those assessed against local benefits of a kind tending to increase the value of the property assessed. Do not include Federal income taxes, nor estate or inheritance taxes.

Losses.—Report here losses of property not connected with your trade, business, or profession, sustained during the year from fire, storm, shipwreck, or other casualty, or from theft, which were not compensated for by insurance or otherwise, and for which no claim for insurance is pending. Explain such losses in Item 13 on page 1 of the return.

Contributions.—Report here only contributions made within the year to corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, or to the special fund for vocational rehabilitation. The total amount of contributions to be entered here must not exceed 15 per cent of the net income computed without the benefit of this deduction.

Other deductions.—Bad debts arising out of personal loans may be reported here.

FORM 1040 F—UNITED STATES INTERNAL REVENUE SERVICE

SCHEDULE OF FARM INCOME AND EXPENSES

TO BE SENT WITH RETURN FORM 1040A OR 1040 TO THE COLLECTOR OF INTERNAL REVENUE ON OR BEFORE MARCH 15, 1919

Name .....

Address .....

.....

INSTRUCTIONS

This work sheet or schedule of farm income and expenses is to be used in determining the net income from a farm business. It may be used by farm owners who work their own farms or rent them out on shares, or by tenants.

If you have two or more farms, it may be desirable to fill out a separate sheet for each farm.

This schedule is to be delivered to the Collector of Internal Revenue with your income tax return (Form 1040A or Form 1040). You should keep a copy for reference next year.

INCOME

All the farm income from whatever source must be reported in this schedule. Only income actually received need be included, but this does not mean that the taxpayer must receive cash. Anything of value received instead of cash must be considered income to the extent of its cash value. Thus, the value of groceries, merchandise, etc., received in exchange for eggs, butter, or other produce must be reported as income.

The value of farm produce which is consumed by the farmer and his family need not be reported as income; but expenses incurred in raising produce thus consumed must not be claimed as deductions.

If timber sold in 1918 was grown in part before March 1, 1913, the income to be reported is the difference between the fair market value of such timber on March 1, 1913, and the price received, less any expenses of growing the timber that have not heretofore been claimed as deductions. Report such income in the same manner as income from sale of land, in Schedule D of Form 1040A or Form 1040.

EXPENSES AND OTHER DEDUCTIONS

Report as farm expenses only amounts actually paid out in carrying on the farm business.

Labor.—Only that part of the board of hired labor which is purchased should be included as a deduction. The value of products furnished by the farm and used in the board of hired labor is not a deductible expense.

Rations purchased and furnished to laborers or share-croppers are deductible as a part of the labor expense.

Do not deduct the value of your own labor or that of your wife or dependent minor children.

Do not deduct amounts paid to persons engaged in household work except to the extent that the services of such employees are used in boarding and otherwise caring for farm laborers. Services of employees engaged in caring for the farmer's own household are not a deductible expense.

Fertilizers, manures, etc.—The cost of manures, commercial fertilizers, lime, raw rock phosphate, etc., that were bought during the year may be included as an expense.

Taxes.—Do not deduct inheritance or estate taxes, Federal income taxes, drainage taxes, or taxes for any improvement or betterment tending to increase the value of the property. Be ready to show tax receipts if possible. Do not deduct taxes on your dwelling or household property

Interest on indebtedness.—All interest paid on farm mortgages, notes, and other obligations incurred to carry on the farm business should be deducted.

Bad debts.—Report only debts, arising from sales that have been reported as income, which have been definitely proved within the year to be worthless.

Repairs and depreciation.—Depreciation claimed should not exceed the actual cost of the property (or its fair market value March 1, 1913, if acquired before that date) divided by its probable life in years. Only such depreciation of farm buildings and equipment as is not offset by repairs may be deducted. Do not deduct repairs or depreciation of the dwelling you occupy, or of your personal or household equipment.

Do not claim as a separate item depreciation of live stock or any other property included in your inventory, as such depreciation is taken care of in the reduced amount of the inventory at the close of the year.

Losses.—You may deduct losses of buildings, machinery, and other property not included in your inventory, resulting from fires or other casualties and not compensated for by insurance or otherwise. Losses of property included in your inventory are taken care of by the reduced amount of the inventory at the close of the year.

Automobile expense.—You may deduct expenses of operation, repairs, and depreciation of automobiles used exclusively in the farm business. If an automobile is used in the farm business for a part of the time only, a corresponding part of the expense may be deducted.

HOW TO FILL OUT THIS SCHEDULE

Enter on pages 2 and 3 the amounts received from sales of farm crops, animals, and products, and the value of crops, animals, and products that were on hand at the beginning and end of the year. Go over the list of farm expenses on page 3 and enter the amount of each kind of expense separately so far as possible. Fill in the statement of repairs and depreciation of farm buildings, etc., on page 4.

In case you have complete farm records already summarized, enter the totals from your books in the spaces provided therefor.

When all the receipts and expenses have been entered, bring the various totals together in the summary on page 4. The figures inclosed in parenthesis are intended as a key to aid you in bringing forward the proper totals.

When you have determined the net farm income, transfer the amount to line 21 in Schedule A of the income tax return (Form 1040A or Form 1040).

While this schedule is intended to cover in detail only your income from the farm business, there are added at the bottom of page 4 spaces for making notes regarding income from other sources. Such income should be reported in detail in Schedules B to K of Form 1040A or Form 1040.

CROPS SOLD AND ON HAND

Kind of crop grown	Acres in crop	On hand at beginning of year			Sold during year			On hand at end of year		
		Quantity	Inventory value		Quantity	Sale price		Quantity	Inventory value	
			Per unit	Total		Per unit	Total		Per unit	Total
				$			$			$
Totals				$			$			$
				(1)			(2)			(3)

LIVE STOCK BOUGHT, SOLD, AND ON HAND

Kind of animals	On hand at beginning of year			Purchased during year			Sold during year			On hand at end of year			Lost during year
	Number	Inventory value		Number	Cost		Number	Sale price		Number	Inventory value		Number
		Per unit	Total		Per unit	Total		Per unit	Total		Per unit	Total	
Cows			$			$			$			$	
Heifers													
Calves													
Bulls													
Steers													
Horses													
Mules													
Colts													
Ewes													
Lambs													
Brood sows													
Other hogs													
Chickens													
Turkeys													
Ducks													
Bees													
Totals			$			$			$			$	
			(4)			(5)			(6)			(7)	

CROP PRODUCTS SOLD AND ON HAND

Kind	On hand at beginning of year		Sold during year			On hand at end of year	
	Quantity	Inventory value	Quantity	Sale price Per unit	Sale price Total	Quantity	Inventory value
		$			$		$
Totals		$ (8)			$ (9)		$ (10)

LIVE STOCK PRODUCTS SOLD AND ON HAND

Milk		$			$		$
Butter							
Cream							
Cheese							
Eggs							
Wool							
Hides							
Honey							
Totals		$ (11)			$ (12)		$ (13)

MISCELLANEOUS RECEIPTS

Description	Amount
Machine work, hire of teams, etc.	$
Total	$ (14)

INVENTORY OF SUPPLIES

Kind	Inventory Value At beginning of year	Inventory Value At end of year
Purchased feeds	$	$
Seeds		
Fertilizers		
Spray materials		
Totals	$ (15)	$ (16)

EXPENSES

Items	Amount
Hired labor (regular)	$
Hired labor (extra)	
Board of hired labor	
Cost of purchased materials furnished labor	
Feed, hay, straw, etc.	
Feed, grain, concentrates	
Feed grinding	
Silo filling	
Corn shredding	
Cotton ginning	
Milk hauling	
Ice	
Horseshoeing	
Breeding fees	
Veterinary fees	
Seed, plants, etc	
Fertilizers, manure	
Spray materials	
Twine	
Threshing	
Baling	
Machine work hired	
Fuel and oil for farm work	
Barrels, bags, crates	
Farm insurance	
Taxes	
Water rent	
Cash rent	
Interest on farm notes and mortgages	
Total	$ (17)

REPAIRS AND DEPRECIATION

Description	Cost of Property (or market value March 1, 1913)	Repairs	Depreciation Rate	Depreciation Amount
Farm buildings	$	$		$
Farm fences, drains, ditches, etc.				
Farm machinery and tools				
Totals	$	$ (18)		$ (19)

SUMMARY

Amount received for farm products sold or exchanged		Farm expenses, etc.	
1. Crops (2)	$	14. Cost of live stock purchased during year (5)	$
2. Live stock (6)		15. Expenses (17)	
3. Crop products (9)		16. Repairs (18)	
4. Live stock products (12)		17. Depreciation (19)	
5. Miscellaneous (14)		18.	
6. Total receipts	$	19. Total expenses, etc.	$
Inventory value of farm crops, etc., at end of year		**Inventory value of farm crops, etc., at beginning of year**	
7. Crops (3)	$	20. Crops (1)	$
8. Live stock (7)		21. Live stock (4)	
9. Crop products (10)		22. Crop products (8)	
10. Live stock products (13)		23. Live stock products (11)	
11. Supplies (16)		24. Supplies (15)	
12. Total inventory at end of year	$	25. Total inventory at beginning of year	$
13. Total receipts plus inventory at end of year (Item 6 plus Item 12)	$	26. Total expenses plus inventory at beginning of year (Item 19 plus Item 25)	$

27. Net farm income to be reported in Schedule A, line 21, of Form 1040A or Form 1040 (Item 13 minus Item 26) $

OTHER INCOME TO BE REPORTED ON RETURN (Form 1040A or Form 1040)

Description	Gross	Deductions	Net
Income from salaries, wages, commissions, bonuses, director's fees, and pensions (to be reported in Schedule B)	$	$	$
Income from partnerships, personal service corporations, and estates and trusts (to be reported as Item C)			
Income from sale of land, buildings, stocks, bonds, and other property (to be reported in Schedule D)			
Income from rents and royalties (to be reported in Schedule E)			
Interest on corporation bonds containing tax-free covenant, on which a tax of 2% was paid by debtor corporation (to be reported as Item F)			
Other income (to be reported in Schedule G)			
Dividends on stock of corporations organized or doing business in the United States (to be reported as Item K on Form 1040A, or K(a) on Form 1040)			
Interest on obligations of the United States in excess of the exemptions allowed by law (to be reported as Item K(b), Form 1040)			

ORIGINAL

THIS FORM WITH DUPLICATE AND REMITTANCE COVERING ONE-FOURTH OF ESTIMATED TAX MUST REACH THE COLLECTOR'S OFFICE ON OR BEFORE MARCH 15, 1919.

Form 1040 T.—UNITED STATES INTERNAL REVENUE SERVICE

TENTATIVE RETURN AND ESTIMATE OF INDIVIDUAL INCOME TAX FOR 1918 AND REQUEST FOR EXTENSION OF TIME FOR FILING RETURN

PRINT BELOW TAXPAYER'S NAME AND ADDRESS

.....

.....

.....

Do not write in this space

AMOUNT PAID

$.....
(Cashier's Stamp)

Check or draft.....	.....
Money order.....	.....
Currency or coin.....	.....
Certificate of indebtedness,	.....

Date..... (To be entered by taxpayer.) No. ..... (To be entered by Collector.)

Collector of Internal Revenue,

.....

The amount stated below is remitted herewith in payment of not less than one-fourth of the estimated amount of the income tax for 1918 of the individual whose name and address appear at the head of this form.

An extension of ..... days in the time allowed for filing a completed return is requested.

It is not possible to file a completed return on or before March 15, 1919, for the following reasons:

.....

.....

.....

Estimated amount of tax..... $.....

Amount of remittance herewith:

Check or draft.	Money order.	Currency or coin.	Certificates of indebtedness.	Total.
$.....	$.....	$.....	$.....	$.....

AFFIDAVIT

I SWEAR (or affirm) that the foregoing is a fair estimate of the total amount of the income tax for 1918 of the individual whose name and address appear at the head of this form, and that the above-stated reasons why a completed return can not be filed on or before March 15, 1919, are true.

Sworn to and subscribed before me } this ..... day of ..... } 19..... .....
(Signature of individual or agent.)

.....
(Name of officer.)

.....
(Official capacity.)

.....
(Address of individual or agent.)

2—250.

Page 1 of Form 1040T

[This Form 1040T—Duplicate (see Supplementary Page 25, for original) is attached to the original (perforated), the reverse of both sheets being blank.]

DUPLICATE
(to be sent to Collector with original)

THIS FORM DULY APPROVED BY THE COLLECTOR MUST ACCOMPANY THE TAXPAYER'S COMPLETED RETURN WHEN FILED

Form 1040 T—UNITED STATES INTERNAL REVENUE SERVICE

TENTATIVE RETURN AND ESTIMATE OF INDIVIDUAL INCOME TAX FOR 1918 AND REQUEST FOR EXTENSION OF TIME FOR FILING RETURN

PRINT BELOW TAXPAYER'S NAME AND ADDRESS

.....

.....

.....

PENALTIES

For Making False or Fraudulent Return.

Not exceeding $10,000 or not exceeding one year's imprisonment, or both, in the discretion of the court, and, in addition, 50 per cent of the tax evaded.

For Failing to Make Return on Time.

Not more than $1,000, and, in addition, 25 per cent of the amount of tax due.

Date..... (To be entered by taxpayer.) No. ..... (To be entered by Collector.)

Collector of Internal Revenue,

.....

The amount stated below is remitted herewith in payment of not less than one-fourth of the estimated amount of the income tax for 1918 of the individual whose name and address appear at the head of this form.

An extension of ..... days in the time allowed for filing a completed return is requested.

It is not possible to file a completed return on or before March 15, 1919, for the following reasons:

.....

.....

.....

Estimated amount of tax..... $.....

Amount of remittance herewith:

Check or draft.	Money order.	Currency or coin.	Certificates of indebtedness.	Total
$.....	$.....	$.....	$.....	$.....

COLLECTOR'S APPROVAL

In consideration of the filing of this tentative return and the payment of not less than one-fourth of the estimated amount of the tax, and for the reasons stated above, the time for filing the completed return of the taxpayer whose name and address appear at the head of this form is hereby extended, by authority of the Commissioner of Internal Revenue, until .....

If the remittance accompanying this tentative return exceeds one-fourth of the tax as computed on the completed return, the excess will be credited against the balance remaining to be paid. If the remittance is less than one-fourth of the tax, the balance due, with interest at the rate of six per cent per annum from March 15, 1919, must accompany the completed return. If the amount paid exceeds the total tax as shown by the completed return, the excess will be refunded.

Date..... .....
Collector of Internal Revenue.

2—4501 .....District of.....

Form 1096—Revised February, 1919—UNITED STATES INTERNAL REVENUE SERVICE

ANNUAL INFORMATION RETURN

OF

PAYMENTS OF INTEREST, SALARIES, RENT, ETC., OF $1,000 OR MORE

For Calendar Year 1918

THIS RETURN, ACCOMPANIED BY REPORTS ON FORM 1099, MUST BE MAILED TO THE COMMISSIONER OF INTERNAL REVENUE, SORTING DIVISION, WASHINGTON, D. C., ON OR BEFORE MARCH 15, 1919	(Name of person or organization by whom payments were made) (Street and number or rural route) (Post office) (State)	(Date received)

Classes of Income	Number of Reports on Form 1099	Total Amount of Payments
Interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable gains, profits, and income of $1,000 or more		$

INSTRUCTIONS

Every individual or organization, in whatever capacity acting, who made payments of income as described above during the calendar year 1918 to any individual citizen or resident of the United States, or domestic partnership, is required to render a return on this form on or before March 15, 1919.

The return should be accompanied by reports on Form 1099, showing the name and business address of the person or organization by whom the payments were made, the full name and address of each individual or partnership to whom the payments were made, the kind of income paid, and the amount.

Partnerships and personal service corporations should prepare reports on Form 1099 for each member of the partnership or personal service corporation. Fiduciaries should make these reports for each beneficiary of the estate or trust. In these cases the word "partnership," "personal service corporation," or "fiduciary" should be entered on the blank line on Form 1099. Income tax returns of partnerships, personal service corporations, and fiduciaries accompanied by reports on Form 1099 should be filed with the *Collector of Internal Revenue* on or before March 15, 1919.

Reports on Form 1099 are not required in the following cases:

1. Interest on the obligations of the United States, of States, Territories, or political subdivisions thereof or of the District of Columbia and compensation paid officers and employees by a State or political subdivision thereof for personal services.
2. Dividends paid by domestic or resident corporations (not including earnings of personal service corporations).
3. Payments by brokers to their customers.
4. Bills paid for merchandise, telegrams, telephone, freight, storage, and similar charges.
5. Amounts paid to employees for expenses incurred in business.
6. Premiums paid to insurance companies.
7. Annuities representing return of capital.
8. Interest accrued on bank deposits if not credited.
9. Rent paid to real estate agents (but the agent must report payments of rent made to the landlord if they amount in the aggregate to $1,000 or more for the year).
10. Payments made by domestic establishments or foreign branch houses thereof to nonresident alien employees for services performed entirely in foreign countries.
11. Salary or compensation of $3,500 or less paid for active services to persons in the military or naval forces of the United States.
12. Interest on bonds of domestic and foreign corporations. (See Forms 1012 and 1096A.)
13. Salaries, wages, etc., paid to nonresident alien individuals and foreign corporations. (See Form 1042.)

The name and address of the individual or organization making reports on Form 1099 may be printed or stamped on each form, but the return Form 1096 must be made under oath.

I swear (or affirm) that to the best of my knowledge and belief the foregoing return and the accompanying reports constitute a true and complete statement of payments of the above-described classes of income made by the person or organization named at the head of this return during the calendar year 1918.

Sworn to and subscribed before me this ..... day of ....., 19.....

(Signature.)

(Title.)

(Signature.)

(State whether individual owner, member of firm, or disbursing officer of Government bureau or office, or if officer of corporation give title.)

(State address of person signing if different from that given at head of return.)

Form 1096 B—UNITED STATES INTERNAL REVENUE SERVICE

ANNUAL INFORMATION RETURN

PAYMENTS OF INTEREST ON BONDS OF DOMESTIC AND FOREIGN CORPORATIONS AND COUNTRIES AND DIVIDENDS ON STOCK OF FOREIGN CORPORATIONS

For Calendar Year 1918

THIS RETURN MUST BE MAILED TO THE COMMISSIONER OF INTERNAL REVENUE SORTING DIVISION WASHINGTON, D. C. ON OR BEFORE MARCH 15, 1919

.....
(Name of debtor organization.)

.....
(Full post-office address.)

.....
(Name of bank or paying agent.)

.....
(Full post-office address.)

(Date received)

MONTH	A. Interest on bonds and other similar obligations of domestic and resident corporations		B. Interest on bonds of foreign corporations and countries and dividends on stock of foreign corporations	
	Number of certificates	Amount	Number of certificates	Amount
January		$		$
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				
Total		$		$

This return must be made by debtor corporations, paying agents, or banks, and must show, by months in which the income was paid and reported on monthly returns, the total number of exemption certificates filed with such returns and the total income paid without deduction of tax, as shown by such certificates and returns.

I swear (or affirm) that this return is a full and complete summary of the number of exemption certificates and amount of income of the classes shown above (heretofore reported on monthly returns, which are hereby made a part of this return), paid during the year 1918.

Sworn to and subscribed before me this ..... day of ....., 1919.

.....
(Signature.)

.....
(Signature.)

.....
(Capacity in which acting.)

.....
2—8598 (Title.)

.....
(Address in full.)

Form 1099
UNITED STATES
INTERNAL REVENUE
(Revised Feb., 1919)

REPORT OF INCOME OF $1,000 OR MORE PAID DURING THE CALENDAR YEAR 1918

SALARIES, WAGES, RENT, INTEREST, OR OTHER FIXED OR DETERMINABLE GAINS, PROFITS, AND INCOME

NAMES MUST BE PRINTED OR WRITTEN PLAINLY

BY WHOM PAID	TO WHOM PAID
NAME	NAME .....
ADDRESS	ADDRESS ..... (Street and number or rural route)
.....	..... (Post office and State)

INSTRUCTIONS

One of these forms must be filled in for each person to whom income, as described on this form, was paid during the calendar year 1918. The name and business address of the person or organization making the payments should be entered under the heading "By whom paid" and the name and home address (if an individual) or business address (if an organization) of the one to whom the income was paid should be entered under the heading "To whom paid."

These forms must be forwarded with return Form 1096 to the Commissioner of Internal Revenue, Sorting Division, Washington, D. C., on or before March 15, 1919.

Do not report on this form dividends on stock, interest on bonds of domestic or foreign corporations, or interest on bonds and other obligations of the United States or foreign countries. For further instructions see Form 1096.

If payee is an individual, is he married? ..... If not, is he head of a family? .....

KIND OF INCOME PAID	AMOUNT		
Salaries, wages, fees, commissions, etc.	$.....	.....	.....
Rent	$.....	.....	.....
Interest on notes, mortgages, etc.	$.....	.....	.....
Premiums and annuities	$.....	.....	.....
.....	$.....	.....	.....

On the blank line above enter the kind and amount of any other fixed or determinable gains, profits, and income except as noted in instructions.

Form 1001
Revised Sept., 1919
U. S. Internal Revenue

OWNERSHIP CERTIFICATE—TAX NOT TO BE PAID AT SOURCE

INTEREST ON BONDS AND OTHER SIMILAR OBLIGATIONS OF DOMESTIC AND RESIDENT CORPORATIONS

NAMES MUST BE PRINTED OR WRITTEN PLAINLY

DEBTOR ORGANIZATION

Name _____

Address _____

_____

Due date _____ Date paid _____

If owner is an individual, is he married? _____ If not, is he head of a family? _____

I certify that the owner of the bonds or other similar obligations from which the interest entered herein was derived falls within the class of persons or organizations opposite which the amount of such interest is entered and is entitled to such interest without deduction of tax.

Signature of Owner or Agent

_____

Address of agent _____

_____

_____

2—8595 See Instructions on Form 1096 A

OWNER OF BONDS (Give name in full)

Name _____

Street Address _____

Post Office _____

Owner	Interest on Bonds and Similar Obligations: With tax-free covenant clauses			Without tax-free covenant clauses		
Citizen or Resident of U. S.: 1. Individual or fiduciary (Personal exemption claimed)*	$			X	X X X	X X
2. Individual or fiduciary (Not subject to withholding)	X	X X X	X X	$		
3. Partnership	(Tax to be withheld Use Form 1000)			$		
4. Corporation	$			$		
Nonresident Alien: 5. Partnership	(Tax to be withheld Use Form 1000)			$		
6. Corporation having an office or place of business in U. S.	$			$		
7. Foreign government	$			$		

* The exemption claimed during a taxable year by ownership certificates must not exceed the personal exemption allowed by law. If exemption is claimed in this manner on any interest received, credit for tax paid at source must not be claimed with respect to such interest on the taxpayer's individual income tax return.

Form 1001 A.
Revised February, 1919.
U. S. Internal Revenue.

OWNERSHIP CERTIFICATE—TAX NOT TO BE PAID AT SOURCE

DIVIDENDS ON STOCK OF FOREIGN CORPORATIONS AND INTEREST ON BONDS OF FOREIGN COUNTRIES AND FOREIGN CORPORATIONS

NAMES MUST BE PRINTED OR WRITTEN PLAINLY

DEBTOR ORGANIZATION

Name.....

Address.....

.....

OWNER OF BONDS OR STOCKS (Give name in full)

Name.....

Street Address.....

Post Office.....

Due date..... Date paid.....

If owner is an individual, is he married?..... If not, is he head of a family?.....

I certify that the owner of the bonds or stock on which the interest or dividend entered herein was derived falls within the class of persons or organizations opposite which the amount of such interest or dividend is entered and is entitled to such interest or dividend without deduction of tax.

Signature of Owner or Agent

.....

Address of Agent. .....

.....

See Instructions on Form 1096 A.

Owner.	Interest on Bonds.			Dividends.		
Citizen or Resident of U. S.:						
1. Individual or fiduciary	$			$		
2. Partnership	$			$		
3. Corporation	$			$		
Nonresident Alien:						
4. Individual or fiduciary	$			$		
5. Partnership	$			$		
6. Corporation	$			$		

2—8593

Collector will stamp here the date of filing if the return is not accompanied by remittance.

Form 1013—Revised February, 1919
UNITED STATES INTERNAL REVENUE SERVICE

ANNUAL RETURN OF NORMAL INCOME TAX TO BE PAID AT SOURCE

INTEREST ON BONDS AND OTHER SIMILAR OBLIGATIONS OF DOMESTIC AND RESIDENT CORPORATIONS AND FOREIGN CORPORATIONS HAVING A PAYING AGENT IN THE UNITED STATES

For the Calendar Year 1918

Do not write in this space

PAYMENT

$

(Cashier's Stamp)

THIS RETURN MUST BE MADE IN DUPLICATE TO THE COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT IN WHICH THE WITHHOLDING AGENT IS LOCATED, ON OR BEFORE MARCH 1, 1919, AND THE TAX MUST BE PAID ON OR BEFORE JUNE 15, 1919.

(Name of debtor organization)

(Address in full)

(Name of withholding agent)

(Address in full)

CASH CHECK M.O.

Examined by

INSTRUCTIONS

If debtor organization makes its own return, no entries need be made on lines provided for name and address of withholding agent.

This return must be made by debtor organizations, or their duly authorized withholding agents, and must show, by months in which the income was paid and reported on Form 1012, the total amount of tax to be paid at source on each of the following classes of payments:

1. Interest on bonds with tax-free-covenant clauses paid to citizens and residents of the United States (individuals and fiduciaries) not claiming personal exemption, to domestic and resident partnerships, to nonresident alien individuals or fiduciaries, to foreign partnerships, and to foreign corporations having no office or place of business in the United States. A normal tax of 2 per centum is required to be withheld and paid at source in such cases.
2. Interest on bonds without tax-free-covenant clauses:
   (*a*) If paid to a nonresident alien individual, a normal tax of 8 per centum is required to be withheld and paid at source.
   (*b*) If paid to a foreign corporation having no office or place of business in the United States, a normal tax of 10 per centum is required to be withheld and paid at source.

MONTH	CLASS 1	CLASS 2 (a)	CLASS 2 (b)	TOTAL
JANUARY	$	$	$	$
FEBRUARY				
MARCH				
APRIL				
MAY				
JUNE				
JULY				
AUGUST				
SEPTEMBER				
OCTOBER				
NOVEMBER				
DECEMBER				
TOTALS	$	$	$	$

If a withholding agent withheld the tax pursuant to the Revenue Act of 1917 from interest paid to nonresident alien individuals and foreign corporations not engaged in trade or business within the United States and not having any office or place of business therein, he need return only the sum withheld.

I swear (or affirm) that the above return is a full and complete summary of the amounts of normal tax (heretofore reported on monthly returns on Form 1012, which are hereby made a part of this return) required to be withheld from payments made by the above organization during the year 1918.

Sworn to and subscribed before me this .....

day of ....., *1919.*

(Signature)

(Signature)

(Capacity in which acting)

(Title)

(Address in full)

Form 1058.
Revised February, 1919.
U. S. INTERNAL REVENUE.

SUBSTITUTE CERTIFICATE—TAX NOT TO BE PAID AT SOURCE

INTEREST ON BONDS AND OTHER SIMILAR OBLIGATIONS OF DOMESTIC AND RESIDENT CORPORATIONS

DEBTOR ORGANIZATION

NAME _____

ADDRESS _____

_____

NUMBER GIVEN ORIGINAL CERTIFICATE FORM 1001 _____

(Date of maturity of interest.) _____ (Date paid.) _____

I certify that the owner of the bonds from which were detached the accompanying interest coupons has filed a certificate of ownership, Form 1001, duly executed as required by Treasury Regulations, and that under the provisions of the Income Tax law, said interest is exempt from the withholding of tax at the source, or that exemption was claimed as stated herein; and I hereby promise to forward the said certificate to the Commissioner of Internal Revenue at Washington, D. C.

Name of bank or collecting agent _____

Name, address, and title of the person authorized to sign _____

SEE INSTRUCTIONS ON FORM 1096 A. 2—8594

OWNER. (CITIZEN OR RESIDENT OF U. S.)	INTEREST ON BONDS. With tax-free covenant clauses.			Without tax-free covenant clauses.		
1. Individual or fiduciary (Personal exemption claimed)	$			X	X X X	X X
2. Individual or fiduciary (Not subject to withholding)	$ X	X X X	X X			
3. Partnership	(Tax to be withheld Use Form 1059)					
4. Corporation	$					

This certificate should be attached to interest coupons by the collecting agent as a substitute for the owner's certificate Form 1001.

Form 1078
Revised June, 1919
U. S. INTERNAL REVENUE

CERTIFICATE OF ALIEN CLAIMING RESIDENCE IN THE UNITED STATES

(To be filed with withholding agent by alien residing in the United States, for the purpose of claiming the benefit of such residence for income tax purposes)

THIS CERTIFICATE HAS NO EFFECT ON CITIZENSHIP

EMPLOYER	EMPLOYEE
NAME.....	NAME.....
ADDRESS.....	STREET ADDRESS.....
.....	POST OFFICE.....

I HEREBY declare that I am a citizen or subject of .....; that I arrived in the United States on or about .....; that I am living in the United States and have no definite intention as to when (if at all) I will make another country my home; that the address in the United States where any notices relative to income tax may be sent or mailed to me is as stated above.

Sworn to and subscribed before me this

..... day of ....., 19.....

(Signed) .....

.....

.....
(Official capacity.)

2—8596

Form 1098.
Revised February, 1919.
U. S. Internal Revenue.

REPORT OF INCOME PAID TO NONRESIDENT ALIEN INDIVIDUALS AND FOREIGN CORPORATIONS DURING THE CALENDAR YEAR 1918

NAMES MUST BE PRINTED OR WRITTEN PLAINLY

TAX TO BE PAID AT SOURCE

PERSON, FIRM, OR CORPORATION PAYING INCOME.

Name _____

Address _____

_____

NONRESIDENT ALIEN INDIVIDUAL OR FOREIGN CORPORATION TO WHOM PAID.

Name _____

Address _____

_____

INSTRUCTIONS.

One of these forms must be filled in for each nonresident alien individual or foreign corporation (not engaged in business within the United States and not having any office or place of business therein) to whom interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income were paid during the year 1918 by any individual, corporation, partnership, fiduciary, employer, or officer or employee of the United States having the control, custody, disposal, or payment of income as above described.

These reports covering interest, rent, salaries, etc., must be forwarded to the Collector of Internal Revenue with a return on Form 1012, so that they will reach his office not later than March 1, 1919. See instructions on that form. 2—8590

Kind of Income.	Amount Paid.		Tax Withheld.	
Salaries, wages, commissions, etc.	$		$	
Rent				
Interest on notes, mortgages, etc.				
Premiums, annuities				

On the blank line above enter the kind and amount of any other fixed or determinable annual or periodical gains, profits, and income paid and amount of tax withheld.

Collector will stamp here the date of filing if the return is not accompanied by remittance.

Form 1012—Revised February, 1919
UNITED STATES INTERNAL REVENUE SERVICE

ANNUAL RETURN OF NORMAL INCOME TAX TO BE PAID AT SOURCE

SALARIES, WAGES, RENT, ETC., PAID TO NONRESIDENT ALIEN INDIVIDUALS AND FOREIGN CORPORATIONS (NOT ENGAGED IN TRADE OR BUSINESS WITHIN THE UNITED STATES AND NOT HAVING ANY OFFICE OR PLACE OF BUSINESS THEREIN)

For the Calendar Year 1918

Do not write in this space

PAYMENT

$ ....

(Cashier's Stamp)

CASH CHECK M.O.

Examined by

THIS RETURN MUST BE MADE IN DUPLICATE TO THE COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT IN WHICH THE WITHHOLDING AGENT IS LOCATED, ON OR BEFORE MARCH 1, 1919, AND THE TAX MUST BE PAID ON OR BEFORE JUNE 15, 1919.

....
(Name of withholding agent)

....
(Address in full)

2—8597

INSTRUCTIONS

This return is required to be made by all individuals, corporations, and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of nonresident alien individuals or foreign corporations not engaged in trade or business within the United States and not having any office or place of business within the United States.

The law requires that a tax equal to 8 per centum of the amount paid as salaries, wages, rent, etc., to individuals and 10 per centum of the amount paid to corporations shall be deducted and withheld. If any tax required to be deducted and withheld is paid by the recipient of the income, it shall not be recollected from the withholding agent. Income derived from dividends on the capital stock or from the net earnings of a corporation, joint-stock company, or insurance company, which is taxable upon its net income under the Revenue Act of 1918 is exempt from withholding and should not be reported.

This return must be accompanied by a report on Form 1098 of income paid for every item entered hereon.

I swear (or affirm) that the following is a true and complete return of all payments of salaries, wages, interest, rents, etc., made during the calendar year 1918 by the above withholding agent and of the tax withheld on payments of income, as above described, to nonresident alien individuals and foreign corporations as defined above, the several items being evidenced by reports which are listed below and inclosed herewith showing the name and address of the recipient of the income, the kind and amount of income paid, and the amount of tax withheld.

I further declare that the amount of tax withheld is $..........

Sworn to and subscribed before me this .... day of ...., 19...... ....
(Signature.)

.... (Signature.) .... (Title.) .... (Capacity in which acting.)

NAME OF INDIVIDUAL OR CORPORATION TO WHOM PAID	ADDRESS IN FULL	AMOUNT OF INCOME PAID		AMOUNT OF TAX WITHHELD	
		$		$	
Totals		$		$	

DELIVER OR SEND THIS RETURN TO COLLECTOR OF INTERNAL REVENUE ON OR BEFORE MARCH 15, 1919

IF EXTENSION OF TIME FOR FILING RETURN HAS BEEN GRANTED THE AUTHORIZATION MUST BE ATTACHED TO THIS RETURN

Form 1120—UNITED STATES INTERNAL REVENUE SERVICE

CORPORATION INCOME AND PROFITS TAX RETURN

FOR CALENDAR YEAR 1918

OR

Fiscal Period begun....., and ended....., 1918

If the payment made on submission of Form 1031T was less than one-fourth of the tax (Item 29 or Item 25, Schedule IV) the balance of such one-fourth, with interest at the rate of 6 per cent per annum from March 15, 1919, must be remitted herewith.

(Print plainly corporation's name and principal place of business)

Examined by

Audited by

(DO NOT WRITE IN THIS SPACE)

PAYMENT

CASH $

CHECK $

M. O. $

CERT. OF IND. $

(Cashier's Stamp)

SCHEDULE I—NET INCOME.

Item.	1911	1912	1913
1. Net Income for Each Prewar Year (as finally determined on income return)	$	$	$
2. Plus amount of corporation excise tax paid in each year			
3. Totals for 1911, 1912, and 1913	$	$	$
4. Less dividends received in 1913			
5. Net Total for 1913			$
6. Average Net Income for Prewar Period (sum of items on line 3 for 1911 and 1912 and Item 5 for 1913, divided by number of years)			$
7. Net Income for Taxable Year (Item 25, Schedule A, page 2)			$

SCHEDULE II—INVESTED CAPITAL.

Item.	1911	1912	1913	Taxable Year.
1. Capital, surplus, and undivided profits at the close of the preceding year as shown by corporation's books before any adjustments are made therein (from Schedule E)	$	$	$	$
2. Plus adjustments by way of additions (from Schedule F)				
3. Total	$	$	$	$
4. Less adjustments by way of deductions (from Schedule G)				
5. Balance	$	$	$	$
6. Plus or minus changes in invested capital during year (from Schedules H and J)				
7. Total (or Balance)	$	$	$	$
8. Less deduction on account of inadmissible assets (from Schedule L)				
9. Invested Capital for Each Year	$	$	$	$
10. Average Invested Capital for Prewar Period (sum of items on line 9 for 1911, 1912, and 1913 divided by number of years)				
11. Increase or Decrease in Invested Capital for Taxable Year as Compared with Average Prewar Invested Capital (Indicate decrease by "D")				$

SCHEDULE III—EXCESS-PROFITS AND WAR-PROFITS CREDITS.

(If this return is made for a period less than a full year, Items 3 and 8 must be reduced as provided in paragraph 1, page 1 of Instructions.)

Excess-profits credit.		War-profits credit.	
1. Eight per cent of invested capital for taxable year (Item 9, last column, Schedule II)	$	4. Average net income for prewar period (Item 6, Schedule I)	$
2. Exemption ($3,000)		5. Plus 10% of increase or minus 10% of decrease shown by Item 11, Schedule II	
3. Excess-Profits Credit (Item 1 plus Item 2)	$	6. (a) Total of (or Difference Between) Items 4 and 5, or (b) 10% of invested capital for taxable year (Item 9, last column, Schedule II), whichever is larger	$
		7. Exemption ($3,000)	
		8. War-Profits Credit (Item 6 plus Item 7)	$

SCHEDULE IV—COMPUTATION OF TAXES.

WAR-PROFITS AND EXCESS-PROFITS TAX (Brackets one and two).

(If this return is for a period less than a full year the invested capital must be reduced as provided in paragraph 1, page 1 of Instructions.)

1. Brackets.	2. Amount of Net Income (Item 7, Schedule I) in Each Bracket.	3. Excess-Profits Credit (Item 3, Schedule III).	4. Balance Subject to Tax.	5. Rate.	6. Amount of Tax.
1. Not over 20% of invested capital	$	$	$	30%	$
2. Over 20% of invested capital				65%	
3. Totals	$	$	$		$

WAR-PROFITS AND EXCESS-PROFITS TAX (Bracket three).

4. Net income for taxable year (Item 7, Schedule I)	$	7. Eighty per cent of Item 6	$
5. Less amount of war-profits credit (Item 8, Schedule III)		8. Less Item 3 column 6 (if smaller than Item 7)	
6. Balance	$	9. Tax in Bracket Three (Item 7 minus Item 8—if Item 8 is the larger, make no entry).	$
10. Total War-Profits and Excess-Profits Tax as Computed under Section 301 (a) (Item 3 column 6 plus Item 9)			$
11. Total War-Profits and Excess-Profits Tax, if Computed under Section 302, 303, 304 (c) or 337 (see Instructions, page 1, paragraphs 6 and 7)			$

INCOME TAX.

12. Net income for taxable year (Item 7, Schedule I)	$	17. Tax of 12% on Item 16	$
13. Less interest as exclusion (U. S. securities (Item 4, Schedule 4, page 2))	$		
14. War-profits and excess-profits tax (Item 10 or 11)		18. Item 10 or Item 11 plus Item 17	
15. Exemption ($2,000 unless return is for less than a year)		19. Less income, war-profits, and excess-profits taxes paid or accrued to foreign countries on income arising from sources therein, and to possessions of the United States (see Sections 238 and 240 (c) of Revenue Act of 1918)	
16. Balance subject to income tax (Item 12 less Items 13, 14, and 15)	$		
20. Total War-Profits, Excess-Profits, and Income Taxes (except in case of a fiscal year) (Item 18 minus Item 19)			$

ADJUSTMENT OF TAX FOR FISCAL YEAR ENDED IN 1918.

21. That proportion of Item 20 which the number of months within the calendar year 1918 is of the number of months in the entire period	$	23. Total tax (Item 21 plus Item 22)	$
22. That proportion of a tax computed under the revenue acts of 1916 and 1917 which the number of months within the calendar year 1917 is of the number of months in the entire period	$	24. Less total tax already paid for the fiscal year ended in 1918	
		25. Balance of Tax	$

26. Tax paid: On submission of tentative return (1031T). $ ..... ; by remittance accompanying this return, $ ..... Total $

1—6.20

SCHEDULE A—TAXABLE NET INCOME.

NOTE.—Railroad corporations, banks, insurance companies, and other corporations required to submit statements of income and expenses to any national, State, municipal, or other public officer may submit instead of Schedule A a statement of income and expenses in the form in which submitted to such officer. In such cases the taxable net income will be reconciled by means of Schedule B with the net profit shown by the income and expense statement submitted, and should be entered as Item 7, Schedule I, page 1.

GROSS INCOME.		
1. Gross sales, less returns and allowances	$	
2. Less cost of goods sold, exclusive of expenses, repairs, and other items called for separately below (from Schedule A2)		$
3. Gross income from operations other than trading or manufacturing, less allowances (from Schedule A3)		
4. Interest on obligations of the United States or its possessions not exempt (from Schedule A4)		
5. Interest from other sources (from Schedule A5)		
6. Rentals		
7. Royalties		
8. Share of net income earned since December 31, 1917, by personal service corporations (whether received or not)		
9. Dividends on stock of foreign corporations (from Schedule A9)		
10. Gross income from all other sources except dividends (not including any amount in respect of sales of capital assets or miscellaneous investments—see Item 23, below) (from Schedule A10)		
11. TOTAL OF ITEMS 1 TO 10		$
DEDUCTIONS.		
12. Ordinary and necessary expenses (except amounts reported in Item 2 above or called for separately below, and not including cost or value of capital assets or miscellaneous investments sold during taxable year—see Item 23) (from Schedule A12)	$	
13. Compensation of officers (including salaries, commissions, and other compensation in whatever form paid) (from Schedule A13)		
14. Repairs (including labor, supplies, overhead, and other items properly chargeable to repairs) (from Schedule A14)		
15. Interest (except on indebtedness incurred or continued to purchase or carry obligations or securities, other than obligations of the United States issued after September 24, 1917, the interest on which is wholly exempt from income tax)		
16. Taxes (except Federal income, war-profits, and excess-profits taxes, taxes which are a credit under Section 238, and taxes assessed against local benefits of a kind tending to increase the value of the property assessed)		
17. Debts ascertained to be worthless and charged off within the taxable year		
18. Exhaustion, wear and tear (including obsolescence) (from Schedule A18)		
19. Amortization of war facilities (from Schedule A19)		
20. Depletion (if depletion is claimed, Form A (revised) of Mines and Minerals Section should be obtained from the Collector, filled in, and filed)		
21. TOTAL OF ITEMS 12 TO 20		$
22. DIFFERENCE BETWEEN ITEMS 11 AND 21		$
23. Profit or loss on sales of capital assets and miscellaneous investments (from Schedule A23)	$	
24. Losses sustained during the taxable year from fire, storm, or other casualty, or from theft, not compensated for by insurance or otherwise (from Schedule A24) (extend in last column net total of Items 23 and 24)		$
25. NET INCOME FOR TAXABLE YEAR (total of or difference between Item 22 and Item 24, last column) (to be entered as Item 7, Schedule I, page 1)		$

SCHEDULE B—RECONCILIATION OF NET PROFIT PER BOOKS WITH TAXABLE NET INCOME.

1. Net profit for year per books, before any adjustments are made therein	$			
2. Unallowable deductions:				
(a) Donations, gratuities, and contributions				
(b) Income, war-profits, and excess-profits taxes paid or accrued to the United States, its possessions, or a foreign country				
(c) Special improvement taxes				
(d) Furniture and fixtures, additions, or betterments treated as expenses on the books				
(e) Replacements covered by depreciation				
(f) Insurance premiums paid on the life of any officer or employee for the benefit of the corporation or business				
(g) Interest on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917) the interest upon which is wholly exempt from income tax				
(h) Additions to reserves for bad debts, contingencies, etc. (to be detailed)				
(i)				
(j)				
(k)				
(l)				
(m) Other unallowable deductions (to be detailed)				
(n)				
(o)				
3. Amount necessary to adjust book profit or loss with the amounts reported in Items 23 and 24, Schedule A (unless entry belongs on line 7)				
4. TOTAL	$			

5. Nontaxable income:				
(a) Interest on obligations of the United States and its possessions, wholly exempt	$			
(b) Interest on obligations of States, Territories, and political subdivisions thereof				
(c) Interest on Farm Loan Bonds issued under Federal Farm Loan Act				
(d) Dividends on stock of domestic corporations				
(e) Dividends on stock of personal service corporations declared out of profits earned prior to January 1, 1918				
(f) Other items of nontaxable income (to be detailed)				
(g)				
(h)				
(i)				
6. Charges against reserves for bad debts, contingencies, etc. (to be detailed)				
(a)				
(b)				
(c)				
(d)				
7. Amount necessary to adjust book profit or loss with the amounts reported in Items 23 and 24, Schedule A (unless entry belongs on line 3)				
8. Taxable net income (Item 25, Schedule A)				
9. TOTAL	$			

SCHEDULE C—BALANCE SHEETS.

Attach hereto balance sheets as of the beginning and end of the taxable year (preferably in parallel columns), showing as nearly as practicable the details called for below:

ASSETS.

Cash (including cash in bank and on hand, certificates of deposit, etc.).
Trade accounts and notes receivable (before deducting reserves for losses).
Other accounts and notes receivable (to be classified).
Inventories:
Raw materials.
Work in progress.
Finished products.
Supplies.
Investments:
U. S. bonds and obligations (each issue to be stated separately).
Stock of corporations—
Foreign.
Domestic.
Bonds—
Exempt (municipal, State, etc.).
Other.
Loans and advances:
To officers and employees.
To others.

ASSETS (Continued).

Deferred charges to future operations.
Fixed assets:
Land.
Buildings.
Machinery.
Tools and minor equipment.
Delivery equipment.
Office furniture.
Other (state character).
TOTAL.
Less reserve for depreciation.
NET VALUE.
Patents, good will, and other intangible assets:
Paid for in cash or other tangible property.
Paid for in stock (other than stock dividends).
Created by stock dividend or otherwise.
Discount:
On bonds.
On stock.
TOTAL.

LIABILITIES.

Notes payable:
To officers and stockholders.
To others (including bank loans).
Accounts payable:
Trade.
Other.
Accrued expenses and reserves, the charges creating which are allowable deductions from income (to be detailed).
Reserve for losses on notes and accounts receivable.
Reserves for contingencies, etc., the charges creating which are not allowable deductions from income (to be detailed).
Capital stock outstanding (to be classified).
Surplus and undivided profits
TOTAL.

A corporation having a net income of $3,000 or more, which was in existence during at least one full prewar year, should also attach to this return similar balance sheets (preferably in parallel columns) as of the beginning of its first full prewar year and as of December 31, 1913.

SCHEDULE D—ANALYSIS OF SURPLUS ACCOUNT.

Attach hereto an analysis of the corporation's surplus account, showing the details of all adjustments of surplus for the taxable year, as nearly as practicable in the following form:

1. Surplus at beginning of year per books.
Add: 2. Total net profit per books and per Schedule B (Item 1).
3. Other credits to surplus (to be detailed).
4. Total of Items 1, 2, and 3.

Deduct: 5. Dividends (state date payable and amount of each, and whether in cash or in stock).
6. Other debits to surplus (to be detailed).
7. Surplus at end of year per books.

A corporation having a net income of $3,000 or more, which was in existence during at least one full prewar year, should also attach to this return a similar analysis of its surplus account for its first full prewar year and for each subsequent year down to the beginning of the taxable year.

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SCHEDULES SUPPORTING SCHEDULE A

The schedules called for below should be prepared and firmly stapled to this return. Designate each schedule with the number of the item in Schedule A which it explains. Make schedules on paper of uniform size so far as practicable. In the space provided for the purpose on page 6 list all schedules attached to this return, giving the title and schedule number of each.

SCHEDULE A2: COST OF GOODS SOLD, EXCLUSIVE OF EXPENSES, REPAIRS, AND OTHER ITEMS CALLED FOR SEPARATELY.

In support of Item 2, Schedule A, corporations engaged in manufacturing or trading operations should submit an analysis, in reasonable detail, of the cost of goods sold. This statement should ordinarily include the following items but should not include any expense items called for separately in Schedule A.

1. Inventories at beginning of period (to be reconciled with balance sheet).
2. Purchases during period.
3. Labor and wages ordinarily charged to manufacturing cost on the corporation's books, showing the principal items separately.
4. Other expenses ordinarily charged to manufacturing cost on the corporation's books. (State separately large or unusual items.)
5. TOTAL.

Deduct:

6. Inventories at close of period (to be reconciled with balance sheet).
7. Cost of goods sold (Item 5 less Item 6).

NOTE.—Inventories should be valued at (*a*) cost or (*b*) cost or market, whichever is lower, provided, however, that whichever basis was adopted by a taxpayer for the taxable year 1917 must be continued unless upon application to the Commissioner permission is granted to change. If basis (*b*) is used it must be applied to each item in the inventory and not to a part only. Inventories should be recorded in a legible manner, properly computed and summarized, and should be preserved as a part of the accounting records of the taxpayer. (See Articles 1581 to 1585 of Regulations No. 45.)

State here which of the above-mentioned bases for valuing inventories is used in this return.....

SCHEDULE A3: GROSS INCOME FROM OPERATIONS OTHER THAN TRADING OR MANUFACTURING, LESS ALLOWANCES.

Submit a schedule showing the nature and amount of the principal items included in Item 3, Schedule A

Life insurance companies should enter as Item 3, Schedule A, the total premiums received from policyholders less such portion thereof as has been paid back or credited to, or treated as an abatement of premiums of, such policyholders within the taxable year. (See Articles 546 and 547 of Regulations 45.)

Mutual marine insurance companies should report as Item 3, Schedule A, the gross premiums collected and received by them less amounts paid for reinsurance.

SCHEDULE A4: INTEREST ON OBLIGATIONS OF UNITED STATES OR ITS POSSESSIONS NOT EXEMPT.

Enter in table below the maximum amount of Liberty Bonds and other obligations of the United States issued since September 24, 1917 (par value) held at any one time, from which interest was derived during the taxable year:

1. CLASS OF OBLIGATION.	2. MAXIMUM AMOUNT OF OBLIGATIONS.	3. MAXIMUM EXEMPTION.
1a. First Liberty Loan converted into Second Loan and Second Liberty Loan unconverted (interest received since January 1, 1919)	$	$45,000 (See Note.)
1b. First and Second Liberty Loans converted into Third Loan and Third Liberty Loan		In addition an exemption of $5,000 may be claimed as to any one of these classes or may be divided among them.
2. First Liberty Loan converted into Fourth Loan		30,000
3. Fourth Liberty Loan		30,000
4. Other obligations issued since September 24, 1917		0

NOTE.—This exemption as to Items 1a and 1b (maximum $45,000) is limited to one and one-half times the amount of bonds of the Fourth Liberty Loan originally subscribed for and still held. State that amount here, $.....

In order to ascertain the amount to be entered as Item 4, Scehedule A, refer first to the table above.

If the amount entered in column 2 of the table for any class of obligations exceeds the maximum exemption for the same class of obligations plus any part of the $5,000 exemption assigned to that class (see column 3), attach hereto a schedule showing in separate columns the following information:

(*a*) Class of obligations.

(*b*) First and last dates of each period during which the corporation's holdings of that class of obligations remained unchanged.

(*c*) Amount of obligations of that class held by the corporation during each such period.

(*d*) Amount by which each amount entered in column (*c*) exceeds the maximum exemption for that class of obligations.

(*e*) Rate of interest.

(*f*) Interest derived from each amount of principal stated in column (*d*).

For the purpose of showing changes in holdings and applying the exemption, classes 1a and 1b must be taken jointly, but for the purpose of computing the taxable interest they must be entered separately.

Enter as Item 4, Schedule A, the total of column (*f*) for all classes of obligations.

Submit also a statement showing the amount of interest derived from bonds and other obligations of the United States and its possessions, exclusive of those described in the table above.

SCHEDULE A5: INTEREST FROM OTHER SOURCES.

Submit a schedule showing the source, nature, and amount of the principal items included herein, the minor items being grouped in one figure. The total of the schedule should be entered as Item 5, Schedule A.

For interest on foreign bonds submit a schedule showing (*a*) name of country; (*b*) kind of obligations (whether national, state, municipal, or corporate obligations); (*c*) amount of principal; and (*d*) amount of interest.

SCHEDULE A9: DIVIDENDS ON STOCK OF FOREIGN CORPORATIONS.

Submit a schedule showing (*a*) name of corporation; (*b*) country in which organized; (*c*) total par value of stock held; and (*d*) amount of dividends.

SCHEDULE A10: GROSS INCOME FROM ALL OTHER SOURCES EXCEPT DIVIDENDS (not including any amount in respect of capital assets or miscellaneous investments).

Submit a schedule showing the source, nature, and amount of the principal items included herein, the minor items being grouped in one figure. The total of the schedule should be entered as Item 10, Schedule A.

SCHEDULE A12: ORDINARY AND NECESSARY EXPENSES (except amounts called for separately in Schedule A and not including cost or value of capital assets or miscellaneous investments sold during taxable year).

Submit a statement showing character and amount of the principal items included in Item 12, Schedule A.

Insurance companies should state separately in Schedule A12 (*a*) the net addition required by law to be made within the taxable year to reserve funds (including in the case of assessment insurance companies the actual deposit of sums with State or Territorial officers pursuant to law as additions to guarantee or reserve funds; and (*b*) the total of sums other than dividends paid within the year on policy and annuity contracts.

Corporations issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan continuing for life and not subject to cancellation should report in Schedule A12 such part of the net addition (not required by law) made within the taxable year to reserve funds as is required for the protection of the holders of such policies.

Mutual marine insurance companies should report in Schedule A12 amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment and the payment thereof.

Mutual insurance companies (other than mutual life and mutual marine insurance companies) that require their members to make premium deposits to provide for losses and expenses should report in Schedule A12 the amount of premium deposits returned to their policyholders and the amount of premium deposits retained for the payment of losses, expenses, and reinsurance reserves (unless deducted elsewhere in Schedule A).

SCHEDULE A13: COMPENSATION OF OFFICERS.

Submit a schedule showing for each officer (1) name, (2) duties, (3) time devoted to such duties, (4) shares of stock owned, (5) total annual compensation for the years 1916, 1917, and 1918, and (6) reasons for increases.

SCHEDULE A14: REPAIRS (including labor, supplies, overhead, and other items properly chargeable to repairs).

Submit a schedule showing the nature and amount of the principal items included in Item 14, Schedule A.

Incidental repairs, which do not add to the value or appreciably prolong the life of property, are deductible as expenses. Expenditures for new buildings or for permanent improvements or betterments which increase the value of the property are chargeable to capital account. Expenditures for restoring or replacing property are not deductible under this or any other item of the return. Such expenditures are chargeable to capital account or to depreciation reserves, depending on the treatment of depreciation on the books of the taxpayer.

SCHEDULE A18: EXHAUSTION, WEAR AND TEAR (including obsolescence).

Submit a columnar schedule containing, in the most practicable form, substantially the following information:

1. A classification of depreciable assets subdivided on the basis of (*a*) character, (*b*) term of useful life.
2. The fair market value of such assets March 1, 1913, if acquired before that date.
3. The cost of such assets if acquired after February 28, 1913.
4. The estimated life or term of reasonable usefulness of such assets from date acquired or from March 1, 1913, as the case requires. Give reasons for your conclusions.
5. For each class of assets state—
   (*a*) The total amount of depreciation from March 1, 1913, to the beginning of the taxable year.
   (*b*) The total amount of depreciation (exhaustion, wear and tear, including obsolescence) claimed for the taxable year.
6. A reconciliation of all figures shown in this schedule with corresponding figures reflected in the balance sheets.

SCHEDULE A19: AMORTIZATION OF WAR FACILITIES.

If amortization of war facilities is claimed the taxpayer is required to submit with this return the information and schedules called for in Articles 181 to 187 of Regulations 45.

SCHEDULES A23 and A24: PROFIT OR LOSS ON SALES OF CAPITAL ASSETS and miscellaneous investments, and losses sustained during the taxable year from fire, storm, or other casualty, or from theft, not compensated for by insurance or otherwise.

Submit a columnar schedule setting forth for each sale of capital assets or of miscellaneous investments and for each loss during the taxable year the information called for below:

1. Description of property sold or of property in respect of which a loss is claimed.
2. Date acquired.
3. Fair market price or value on March 1, 1913, if acquired before that date, or cost if acquired after February 28, 1913.
4. Cost of improvements, if any, since February 28, 1913, or since date of acquisition, if acquired after February 28, 1913.
5. Total of Items 3 and 4.

   Less—

6. Depreciation or depletion of property subject thereto—
   (*a*) Per books.
   (*b*) Accrued but not on books.
7. Salvage value, if any, of property on which a loss is claimed.
8. Amount of insurance or other recovery on property, if any.
9. Proceeds of sale or cash value of property received in exchange (for transactions falling in Item 23, Schedule A) (see Note).
10. Total of Items 6 to 9, inclusive.
11. Profit or loss.
12. Cause of loss (for losses falling in Item 24, Schedule A).

NOTE.—Submit evidence substantiating the basis used by you in arriving at the cash value of property received in exchange for other property.

COMPENSATION AT RATE OF $3,000 OR MORE PER ANNUM.

Submit a schedule showing for each employee (if a stockholder of the corporation), whose compensation is at the rate of $3,000 or more per annum, facts similar to those called for in Schedule A13.

WORKING PAPERS.

Every corporation should preserve, available for inspection by a revenue officer, working papers showing—

1. The balance in each account on the corporation's books that was used in preparing Schedule A.
2. The amount deducted from each such balance on account of each class of non-taxable income, unallowable deductions, and other adjustments indicated in Schedule B, with a reference to the number of the item in Schedule B in which each amount so deducted was included.
3. The remainder of each such balance, analyzed to show the amount included in each item of Schedule A, with a reference to the number of the item in Schedule A in which each such amount was included.

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SCHEDULE E—CAPITAL, SURPLUS, AND UNDIVIDED PROFITS AS SHOWN BY BOOKS BEFORE ANY ADJUSTMENTS ARE MADE THEREIN.

E4. Stock actually outstanding at the end of the preceding taxable year should be entered in this schedule to the extent that it is paid up. If stock or shares were issued at a nominal value or without par value, the entries should reflect the amounts on the books in respect thereof at the close of the preceding taxable year.

E5. This item should include paid-in surplus per books at the end of the preceding year. If any amount is claimed under Section 326(a)(2) of the Revenue Act of 1918 or under Article 837 of Regulations 45 the amount claimed should be entered under Item 1, Schedule F, and not in this schedule.

E7. Reserves which represent allocations of surplus and were not accumulated through deductions made in computing net income as returned in previous years may, if properly explained, be entered on line 7. Such entries should be identified and if necessary reconciled with balance-sheet reserves.

E9. The cost (or book value if different from cost) of treasury stock held at the end of the preceding taxable year should be deducted on line 9, if the par value of such stock is included in the amount entered on line 4. Treasury stock includes all stock reacquired by the corporation and not canceled, regardless of the reason for the acquisition.

Item.	1911	1912	1913	Taxable Year.
Capital stock paid up and actually outstanding at the close of the preceding year:				
1. First preferred	$	$	$	$
2. Second preferred				
3. Common				
4. Total	$	$	$	$
Surplus and undivided profits:				
5. Paid-in surplus				
6. Earned surplus and undivided profits				
7. Reserves, additions to which are not deductible in computing net income (to be reconciled with balance-sheet items)				
8. Grand totals of Items 4, 5, 6, and 7	$	$	$	$
9. Deduct cost of treasury stock (or book value if different from cost), if any is included above as outstanding				
10. Net total (Item 8 minus Item 9)	$	$	$	$

SCHEDULE F—ADJUSTMENTS BY WAY OF ADDITIONS.

F1. If an addition to invested capital is claimed in Item 1, Schedule F, submit a statement showing (*a*) the kind of property, (*b*) the year in which it was paid in, (*c*) from whom acquired, explaining his relationship to the corporation, (*d*) the actual cash value of such property at the date when paid in, (*e*) the par value of stock or shares issued therefor and the amount at which such property is entered in the accounts, and (*f*) the basis upon which the actual cash value of the property was determined and the date when such determination was made.

F2. If an addition to invested capital is claimed in Item 2, Schedule F, submit a statement showing (*a*) the kind of property, (*b*) the year in which it was acquired, (*c*) its cost, (*d*) the amount of depreciation sustained on such property from the date of acquisition to the beginning of the taxable year. State also whether each item sought to be restored was actually used or usable at the beginning of the taxable year. Were these expenditures, when made, written off in lieu of depreciation? ..... If so, explain what adjustments have been made to provide for depreciation, in view of the proposed restoration to surplus.

F3. If any addition to invested capital is claimed in Item 3, Schedule F, state specifically the amount of depreciation written off each year in the books of the company, and the amount allowed as a deduction in computing net income.

F4. If any assets of the trade or business in existence during both the taxable year and any prewar year are included in the invested capital for the taxable year but not for such prewar year, or are valued on a different basis in computing the invested capital for the taxable year and such prewar year, entries should be made in this schedule adjusting the invested capital for each prewar year affected so as to value such assets upon the same basis in the prewar period as in the taxable year.

Item.	1911	1912	1913	Taxable Year.
1. Actual cash value of tangible property clearly and substantially in excess of par value of stock issued therefor or of the cash or other consideration paid therefor (Articles 836 and 837)	$	$	$	$
2. Additions to surplus (Articles 840 to 843)				
3. Depreciation charged in the accounts of the corporation but not allowable as a deduction on income tax returns				
4. Adjustment of valuation of assets in existence both during taxable year and in prewar period (Article 934)				x x x x x x x x x x x x
5.				
6.				
7.				
8. Total	$	$	$	$

SCHEDULE G—ADJUSTMENTS BY WAY OF DEDUCTIONS.

G1. Is any patent, copyright, secret process or formula, good will, trade-mark, trade brand, franchise, or other similar intangible property, paid in for stock, entered on the books of the corporation at a value in excess of its actual cash value when paid in? ..... In excess of the par value of the stock issued therefor? ..... Is the aggregate of such assets acquired prior to March 3, 1917, entered on the books at a value in excess of 25 per cent of the par value of the stock outstanding on March 3, 1917? ..... Is the aggregate of such assets entered on the books at a value in excess of 25 per cent of the par value of the stock outstanding at the beginning of the taxable year? .....

If the answer to any of the foregoing questions is "yes," submit a statement showing separately with respect to such assets acquired (1) before March 3, 1917, and (2) on or after that date: (*a*) Date of acquisition; (*b*) cash value at that date, with a complete explanation of the basis upon which such cash value was determined; (*c*) par value of the stock issued therefor; (*d*) par value of total stock outstanding March 3, 1917; (*e*) par value of total stock outstanding at the beginning of the taxable year; (*f*) the value at which such assets are entered on the books of the corporation.

If all the intangibles were acquired before March 3, 1917, the amount by which (*f*) exceeds (*b*), (*c*), 25 per cent of (*d*), or 25 per cent of (*e*), whichever is lowest, must be entered as Item 1, Schedule G, for the taxable year and for each year of the prewar period that is affected.

If the intangibles were acquired on or after March 3, 1917, the amount by which the entry in (*f*) relating to such intangibles exceeds (*b*) or (*c*) relating thereto, or 25 per cent of (*e*), whichever is lowest, must be included in Item 1, Schedule G, for the taxable year: Provided, that if intangibles were acquired before March 3, 1917, and also on or after that date, deduction shall be made so that the amount included in invested capital for the aggregate of intangibles shall not exceed 25 per cent of the par value of the total stock outstanding at the beginning of the taxable year.

Note.—If the stock of the corporation was issued at a nominal value or without par value, for the purpose of the computation under Item 1 the par value shall be deemed to be the fair market value as of the date or dates of issue. The aggregate value so determined of stock outstanding on March 3, 1917, or at the beginning of the taxable year, shall be the basis for the computation.

G2. Is any tangible property, paid in for stock, entered on the books of the corporation at a value in excess of its actual cash value when received? ..... In excess of the par value of the stock paid therefor? .....

If the answer to either of the foregoing questions is "yes," submit a statement showing (*a*) kind of property; (*b*) when acquired; (*c*) par value of the stock paid therefor; (*d*) actual cash value of the property when paid in; (*e*) the basis on which that value was determined; (*f*) value at which the property is entered on the corporation's books; and (*g*) amount by which such value exceeds the allowable value under section 326 (*a*) (2) of the Revenue Act of 1918. Enter this amount as Item 2, Schedule G, for the taxable year and for each year of the prewar period that is affected.

G3. (*a*) Was any stock issued by the corporation ever returned as a gift or for a consideration substantially less than its par value? ..... (*b*) If so, what was the total par value of such stock? $..... (*c*) What was the consideration paid for the return thereof? $..... (*d*) What amount of cash or its equivalent was derived from the resale of such stock? $..... (*e*) What entries were made in the accounts to evidence the return and the resale of such stock? .....

The excess of (*b*) over (*d*) must be entered as Item 3, Schedule G, for the taxable year and for each year of the prewar period that is affected. However, no deduction is necessary if adequate adjustment has been made under Item 2 of this schedule.

G4. Was the business reorganized or consolidated or was its ownership changed or was there a change in ownership of property after March 3, 1917? ..... If so, answer the following questions:

(*a*) Did an interest of 50 per cent or more in the business or in the property which changed ownership remain in the control of the same persons, corporations, associations, or partnerships, or of any of them? .....

(*b*) Were any of the assets entered on the books of the corporation making this return at a higher value than on the books of its predecessor? .....

(*c*) If such previous owner was not a corporation attach a statement showing (1) the cost of acquisition to the previous owner of any asset so transferred or received; (2) expenditures subsequent to that date for betterment or development, not deducted as expense or otherwise since March 1, 1913, by such previous owner; (3) the allowance for depreciation, depletion, or impairment since the date of acquisition by such previous owner.

(*d*) If all, or substantially all, of the property was acquired from a corporation during the taxable year attach hereto balance sheets of such predecessor corporation as of the beginning of the taxable year and as of the date immediately prior to the transfer of the property to the corporation making this return, and also a balance sheet or statement of the corporation making this return showing the values at which such property received or transferred was entered on the books.

The increase in book value of any property acquired by reorganization, consolidation, or change of ownership, over the amount allowable to the predecessor corporation or over the amount as computed under (*c*), if the previous owner was not a corporation, must be deducted from the invested capital for the taxable year as Item 4, Schedule G.

G5. Is any property (including physical property, securities, and intangible property) paid for with cash or with other tangible property entered on the books of the corporation at a value in excess of the amount of cash paid therefor or the actual cash value of the tangible property paid therefor? ..... If so, submit a statement showing (*a*) kind of property; (*b*) amount of cash paid therefor; (*c*) actual cash value of other tangible property paid therefor; (*d*) how that value was determined; (*e*) value at which the property is entered on the books of the corporation; and (*f*) excess of (*e*) over (*b*) or (*c*). This excess must be entered as Item 5, Schedule G, for the taxable year and for each year of the prewar period that is affected.

G6. Has adequate provision been made in the expense accounts of the company for (*a*) losses of every kind? .....; (*b*) depreciation? .....; (*c*) obsolescence? .....

(*d*) depletion of mineral deposits, timber supplies, and the like? .....

If adequate charge has not been made for depreciation, depletion, obsolescence, and other losses, and the value of the property has not been maintained by replacements that have been charged to expense, proper additional charges therefor must be computed for all years in which they were not made on the books, and the total amount of such charges must be entered as Item 6, Schedule G, for the taxable year (and for each year of the prewar period that was affected) and deducted in arriving at the surplus and undivided profits.

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SCHEDULE G—ADJUSTMENTS BY WAY OF DEDUCTIONS (Concluded).

Item.	1911	1912	1913	Taxable Year.
1. Valuation of patents, copyrights, secret processes or formulæ, good will, trade-marks, trade brands, franchises, or other intangible property	$	$	$	$
2. Valuation of tangible property paid in for stock				
3. Stock returned to the corporation as a gift, etc				
4. Valuation of assets acquired in reorganizations				
5. Appreciation				
6. Depreciation and depletion				
7.				
8.				
9. Total Deductions	$	$	$	$

SCHEDULE H—CHANGES IN INVESTED CAPITAL DURING TAXABLE YEAR.

1. Changes in invested capital during the taxable year ordinarily arise in one or more of the following ways:
   (a) Additions by reason of the sale of capital stock or the issue of capital stock for tangible or other assets.
   (b) Liquidation of part of the capital by retirement of stock or purchase of treasury stock not out of current earnings.
   (c) Payment of cash dividends out of earnings of prior years.
   (d) Deduction of the amount of Federal income and excess-profits taxes for the previous year.
   (e) Payment of assessments by stockholders, or creation of paid-in surplus by contribution of stockholders.

Specify (by using red ink for distributions, or otherwise) whether each item represents an addition or a distribution.

2. Report dividends paid out of profits of prior years but not dividends paid out of profits of the taxable year. Any distribution made during the first 60 days of the taxable year shall be deemed to have been made from earnings or profits accumulated during preceding taxable years; but any distribution made during the remainder of the taxable year shall be deemed to have been made from the profits for that year to the extent that such profits are sufficient. (See Article 1541.)

3. If stock is issued for cash, the actual cash received (but not the amount of discount) should be entered in this schedule. Assets (other than cash) paid in for stock must be valued in accordance with Section 326 (a) (2) of the Revenue Act of 1918.

4. The amount of Federal income and excess-profits taxes payable should be deducted as of the date when due and payable whether reserves have been set up on the books or not. (See Article 845.)

5. If capital stock of the corporation is reacquired but not paid for out of current profits, the cost of such stock should be deducted from invested capital.

6. The data called for in columns 1 to 5 should be given for all transactions, except that columns 3 and 4 are applicable only to the issue or reacquisition of the corporation's stock.

7. In Column 6 enter the number of days remaining in the taxable year (including the date of change).

8. The net changes, if not in accordance with the increases or decreases reflected in the balance sheets, should be fully reconciled therewith.

1. Nature of Additions and Distributions.	2. Date.	3. Number of Shares Sold or Reacquired.	4. If for Cash, State Price per Share.	5. Amount of Cash or Cash Value Actually Received or Paid Out.	6. Number of Days Effective.	7. Adjusted Average. (Column 5 × Column 6 / Number of days in taxable year.)
1.			$	$		$
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						

SCHEDULE J—CHANGES IN INVESTED CAPITAL DURING PREWAR YEARS.

(Compute the net addition or reduction separately for each year. See instructions under Schedule H.)

1. Nature of Additions and Distributions.	2. Date.	3. Number of Shares Sold or Reacquired.	4. If for Cash, State Price per Share.	5. Amount of Cash or Cash Value Actually Received or Paid Out.	6. No. of Days Effective.	7. Adjusted Average. (Column 5 × column 6 / Number of days in year.)
1.			$	$		$
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						

SCHEDULE K—CHANGES IN INVESTED CAPITAL FROM END OF PREWAR PERIOD TO BEGINNING OF TAXABLE YEAR, NOT SHOWN IN SCHEDULE E.

(See instructions under Schedule H, so far as applicable.)

1. Nature of Additions and Distributions.	2. Date.	3. Number of Shares Sold or Reacquired.	4. If for Cash, State Price per Share.	5. Amount of Cash or Cash Value Actually Received or Paid Out.
1.			$	$
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				

SCHEDULE L—INADMISSIBLE ASSETS.

Has the corporation any inadmissible assets (i. e., stocks, bonds, and other obligations, except obligations of the United States, the income from which is not taxable)? .....

If so, attach hereto a statement showing for 1911, 1912, 1913, and the taxable year, separately, the facts called for in Items (*a*) to (*j*) of this schedule.

If the income from such assets consists in part of gain or profit from the sale or other disposition thereof, or if all or part of the interest derived from such assets is in effect included in the net income because of the limitation on the deduction of interest under Section 234 (*a*) (2) of the Revenue Act of 1918, then a corresponding part of the capital invested in such assets is deemed an admissible asset. In such case, set forth in detail—

(*a*) The various kinds of income derived from such assets and the computation of the part of the capital invested therein which is deemed an admissible asset.

For the purpose of this schedule, inadmissible assets shall be valued at cost of acquisition except that if the taxpayer has in previous years been allowed a deduction on account of the fall in the market value of securities, such assets shall be valued at cost less the deduction allowed. Admissible assets shall be valued as provided in Sections 326, 330, and 331 of the Revenue Act of 1918 and Articles 831–869, 931–934, and 941 of Regulations 45. The average amount of assets of each kind held during any year may ordinarily be determined by dividing by 2 the sum of the amount of such assets held at the beginning of the year and the amount held at the end of the year. In such case the amount of admissible assets may best be determined from (1) the balance sheet as of the beginning of the year *adjusted* with respect to the items in Schedules F and G, and (2) the balance sheet as of the end of the year correspondingly adjusted. But if at any time during the year a substantial change has taken place in the amount of such assets, the average amount must be determined as provided in Article 852 of Regulations 45. In such case, show in detail—

(*b*) The computation of such amount.

State also—

(*c*) Amount of inadmissible assets held at beginning of the year.
(*d*) Amount of inadmissible assets held at end of year.
(*e*) Average amount of inadmissible assets held during year.
(*f*) Amount of admissible assets held at beginning of the year.
(*g*) Amount of admissible assets held at end of year.
(*h*) Average amount of admissible assets held during year.
(*i*) Sum of (*e*) plus (*h*).
(*j*) Percentage which (*e*) is of (*i*).

This percentage (*j*) for each year should be applied to the figures for that year appearing on line 7, Schedule H, in order to obtain the deduction on account of inadmissible assets, which should be entered on line 8, Schedule H.

QUESTIONS.

KIND OF BUSINESS.

1. Explain below the nature of the corporation's business in sufficient detail to show in which of the following general classes of activities it falls:

(1) Agriculture and related industries, including fishing; (2) mining, quarrying, and related industries; (3) manufacturing; (4) construction; (5) trading; (6) transportation; (7) storage; (8) other services; (9) banking and insurance.

2. If the business falls in any of the classes from 1 to 5, state the special product or products handled; if in class 5, state whether wholesale or retail, or both; if in class 6, state whether rail, water, or other, whether general or local, and the special commodities (if any) transported; if in class 7, state the special commodities stored (if any) or the special kind of storage; if in class 8, state in detail the kind of service rendered; if in class 9, state the branch of banking or insurance engaged in.

3. In all cases state whether the corporation acts as principal (using its own capital) or as agent or broker (on commission) or as both.

(*a*) Main business .....

.....

.....

(*b*) Collateral businesses, if any .....

.....

.....

.....

.....

.....

OTHER CONCERNS IN SAME BUSINESS.

4. Enter on the following lines the names and addresses of five representative concerns in your locality or section of the country engaged in the same kind of business:

.....

.....

.....

.....

.....

INCORPORATION.

5. Date of incorporation .....

6. Under the laws of what State or country? .....

PREDECESSOR BUSINESSES.

7. If the corporation was not in existence during the whole of any one of the calendar years 1911–1913, is its business substantially a continuation of a business carried on during any one or more of those years? ..... If so, give name under which, and address at which, its business was then carried on .....

.....

ACQUISITION OF MIXED AGGREGATES OF ASSETS.

8. Did the corporation ever take over a going business or otherwise acquire a mixed aggregate of tangible property, patents and copyrights, and good will and other similar intangible property, and pay for such property in whole or in part with stock or other securities? .....

9. If so, submit a statement showing—

(*a*) The name of the concern taken over (or from which the property was acquired);
(*b*) The nature of the assets and liabilities so acquired;
(*c*) The total par value of the stock issued therefor;
(*d*) The value at which each class of assets was carried on the books of the concern from which acquired (if obtainable submit a balance sheet of the predecessor corporation as of the date of acquisition);
(*e*) The value at which each item was entered on the books of the corporation making this return.

10. If patents, copyrights, secret processes or formulæ, good will, trade-marks, trade brands, franchises, or other intangible property were acquired, state also the basis on which their value was determined and how they were paid for.

AFFILIATIONS WITH OTHER CORPORATIONS (TO BE ANSWERED BY EVERY CORPORATION).

11. Do you own directly or control through closely affiliated interests or by a nominee or nominees over 50 per cent of the outstanding capital stock of another corporation or of other corporations? .....

12. Is over 50 per cent of your capital stock owned by another corporation or by two or more corporations that are affiliated? .....

13. Is over 50 per cent of your capital stock as well as over 50 per cent of the capital stock of another corporation or of other corporations owned or controlled by the same individual or partnership or by the same individuals or partnerships? .....

14. Is this return a consolidated return within the meaning of Articles 631 to 633, inclusive, of Regulations 45? .....

15. Affiliated corporations as indicated in 11, 12, or 13 above must comply with the following requirements:

16. If the answer to question 11 is "yes," submit a statement showing for each of the corporations over 50 per cent of whose stock is owned or controlled by you, either directly or through closely affiliated interests or by a nominee or nominees:—

(*a*) The name and address;
(*b*) The total par value of the outstanding capital stock at the beginning of the taxable year, and the date and amount of each change therein;
(*c*) The total par value of such outstanding capital stock owned or controlled by you at the beginning of the taxable year, or at the date of acquisition if acquired during the taxable year, and the date and amount of each change therein.

17. If the answer to question 12 is "yes," state—

(*a*) The name and address of such corporation or corporations,
(*b*) The par value and percentage of your stock held by each.

18. If the answer to question 13 is "yes," submit a statement showing—

(*a*) The names and addresses of such corporations;
(*b*) The name or names and address or addresses of the owning or controlling interest or interests;
(*c*) The total par value of the outstanding capital stock of each corporation at the beginning of the taxable year, and the date and amount of each change therein;
(*d*) The total par value of the outstanding capital stock of each corporation owned or controlled by each one of the several individuals or partnerships at the beginning of the taxable year, and the date and amount of each change therein.

19. If the answer to question 14 is "yes," the information furnished under 16 and 18 should identify the corporations included in the consolidation.

20. If one corporation owns 95 per cent or more of the stock of another, or if 95 per cent or more of the stock of two or more corporations is owned by the same individual or individuals in substantially the same proportion, a consolidated return must be filed, except that the limitations as to consolidation under Article 635 must be observed. If the ownership is less than 95 per cent, but exceeds 50 per cent, the parent corporation or principal corporation of any group of affiliated corporations must furnish the information called for above and in addition must file a statement fully disclosing the details of affiliation other than stock ownership and all other information which will be helpful in determining whether or not a consolidated return should be filed.

VALUATION OF CAPITAL STOCK.

21. What was the fair value of the total capital stock of the corporation as determined in the last assessment of the capital stock tax (if any)? $..... Date of that assessment .....

LIST OF ATTACHED SCHEDULES.

Make below a list of all schedules attached to this return, giving for each a brief title and the schedule number.

.....

.....

.....

.....

.....

.....

.....

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.....

We, the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is to the best of his knowledge and belief a true and complete return made in good faith pursuant to the Revenue Act of 1918 and the Regulations issued thereunder.

Sworn to and subscribed before me } this ..... day of ....., 19.....

Seal of officer taking affidavit.

.....
(Official capacity.)

.....
President.

.....
Treasurer:

INSTRUCTIONS REGARDING DETERMINATION OF CREDITS, COMPUTATION OF TAX, ETC.

PROVISIONS AFFECTING INVESTED CAPITAL AND CREDITS.

RETURNS FOR PART OF A YEAR.

1. If this return is for a period less than a full year, Items 3 and 8, Schedule III; Items 1 and 2, column 2, Schedule IV; and Item 15, Schedule IV, shall be reduced to as many twelfths of the figures for a full year as there are months in the period for which the return is made.

If the period for which the return is made includes fractions of months, there shall be added to the number of complete months as many thirtieths of a month as there are days in the fractional parts of months.

CORPORATIONS NOT IN EXISTENCE DURING PREWAR PERIOD.

2. If a corporation was not in existence during the whole of at least one calendar year in the prewar period, provided a majority of its capital stock was not owned or controlled, directly or indirectly, at any time during the taxable year by a corporation in existence during the whole of at least one calendar year in the prewar period, and provided its gross income does not include 50 per cent or more of gains, profits, commissions, or other income derived from a Government contract or contracts made after April 5, 1917, and before November 12, 1918, the war-profits credit shall be (a) the sum of $3,000 plus (b) the same percentage of the invested capital for the taxable year (not less than 10 per cent, however) as the average per cent of net income to invested capital for the prewar period of corporations engaged in a trade or business of the same general class as the taxpayer.

3. Pending a determination of the deduction by the Commissioner, such corporation shall deduct 10 per cent of the invested capital for the taxable year. (See Section 311 (c, d) of the Revenue Act of 1918 and Articles 783 and 784 of Regulations 45.)

CREDIT FOR INCOME, WAR-PROFITS, AND EXCESS-PROFITS TAXES PAID OR ACCRUED TO FOREIGN COUNTRY OR POSSESSION OF THE UNITED STATES.

4. If a credit is claimed in Item 19, Schedule IV, a copy of Form 1118, completely filled out and sworn to or affirmed, must be submitted with this return. If credit is sought for taxes already paid the form must have attached to it the receipt for each such tax payment. If credit is sought for taxes accrued the form must have attached to it the return on which each such accrued tax was based. (See Article 611 of Regulations 45.)

5. When a credit is claimed for accrued taxes, the Commissioner may, as a condition precedent to the allowance of this credit, require the corporation to give a bond (Form 1119), with sureties satisfactory to and to be approved by him, in such penal sum as he may require, conditioned for the payment by the taxpayer of any amount of taxes found due if the taxes when paid differ from the amount claimed in respect thereof.

PROVISIONS AFFECTING COMPUTATION OF WAR-PROFITS AND EXCESS-PROFITS TAX.

6. Item 10, Schedule IV, is the war-profits and excess-profits tax, unless the taxpayer is entitled to the benefits of one or more of the following provisions:

(a) **Limitation on total tax.**—The maximum war-profits and excess-profits tax imposed shall in no case be more than 30 per cent of the net income in excess of $3,000 and not in excess of $20,000 plus 80 per cent of the net income in excess of $20,000 (Sec. 302).

(b) **Tax on profits from sale of mineral deposits.**—In the case of a bona fide sale of mines, oil or gas wells, or any interest therein, where the principal value of the property has been demonstrated by prospecting or exploration and discovery work done by the taxpayer, the portion of the war-profits and excess-profits tax attributable to such sale shall not exceed 20 per cent of the selling price of such property or interest. (See Articles 971 and 972 of Regulations 45, and section 337 of the Act.)

(c) **Tax of corporation engaged in mining of gold.**—If a corporation was engaged in the mining of gold, its war-profits and excess-profits tax shall be that proportion of Item 10, Schedule IV, which the net income not derived from the mining of gold bears to the total net income (Articles 752 and 753 of Regulations 45—Sec. 304).

(d) **Tax of corporation whose income is derived in part from "personal service."**—If part of the net income (not less than 30 per cent) is derived from a separate trade or business of the character of "personal service," the tax shall be computed in accordance with the provisions of Articles 741 to 743 of Regulations 45 (Sec. 303).

7. **Statement of basis of claims.**—If the corporation claims the benefit of one or more of these provisions, it should attach to the return a complete statement of the basis for such claim and a computation of the tax payable in the event that such claim is allowed. The amount of tax so computed should be entered as Item 11, Schedule IV, but, except in cases falling under (a) above, the taxpayer must nevertheless fill out all the schedules of this form.

SPECIAL CASES.

8. **Definition of special cases.**—Section 327 of the Act provides that in the following cases the tax shall be determined as provided in section 328:

(a) Where the Commissioner is unable to determine the invested capital as provided in section 326;

(b) In the case of a foreign corporation;

(c) Where a mixed aggregate of tangible property and intangible property has been paid in for stock or for stock and bonds and the Commissioner is unable satisfactorily to determine the respective values of the several classes of property at the time of payment, or to distinguish the classes of property paid in for stock and for bonds, respectively;

(d) Where, upon application by the corporation, the Commissioner finds and declares of record that the tax if determined without benefit of this section would, owing to abnormal conditions affecting the capital or income of the corporation, work upon the corporation an exceptional hardship evidenced by gross disproportion between the tax computed without benefit of this section and the tax computed by reference to the representative corporations specified in section 328. This subdivision shall not apply to any case (1) in which the tax (computed without benefit of this section) is high merely because the corporation earned within the taxable year a high rate of profits upon a normal invested capital nor (2) in which 50 per centum or more of the gross income of the corporation for the taxable year (computed under section 233 of Title II) consists of gains, profits, commissions, or other income, derived on a cost-plus basis from a Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive.

9. **Treatment of special cases.**—In the cases specified in section 327 the tax will be specially determined under the provisions of section 328, but the tax will not ordinarily be computed under section 328 merely because the corporation's form or manner of organization, or the limitations imposed by section 326, result in a greater tax than would otherwise be payable. A corporation which comes within the provisions of subdivision (d) of section 327 (paragraph 8, above) may make application for assessment under the provisions of section 328, which application shall be attached to its return in the form of a statement setting forth in full: (a) the reasons why the tax should be so determined; (b) the facts upon which such reasons are based; (c) an exact description of each trade or business or important branch of a trade or business carried on by it; (d) a statement of the invested capital and net income for each year since the beginning of the prewar period; and (e) a statement showing the amount of gains, profits, commissions or other income derived on a cost-plus basis from Government contracts made after April 5, 1917, and before November 12, 1918, and showing the per cent which such income is of the total income of the corporation. (See Article 901.)

10. **Determination of first installment of tax in special cases.**—In the case of a foreign corporation, and in the case of any other corporation where absolutely no data are available for the determination of the invested capital for the taxable year, the installments of the tax shall, in the first instance, be computed and the first installment paid upon the basis of a tax equal to 50 per cent of the net income. In any other case under section 328, including a case where the invested capital for the taxable year can not be accurately determined, but where a minimum amount of invested capital as to which there is no question can be determined, the installments shall in the first instance be computed and the first installment paid upon the basis of a tax upon the minimum amount of invested capital, not, however, exceeding a tax upon the basis of 50 per cent of the net income. In any of the above cases the actual ratio when ascertained by the Commissioner will be used in determining the correct amount of the tax. (See Section 912.)

11. **Returns in special cases.**—Corporations other than foreign corporations making claim for assessment under section 328 of the Act should answer all questions and fill all schedules as far as possible and attach a statement explaining why it is impracticable to fill out the entire return.

UNDISTRIBUTED PROFITS TAXABLE TO STOCKHOLDERS.

12. If any corporation, however created or organized, is formed or availed of for the purpose of preventing the imposition of the surtax upon its stockholders or members through the medium of permitting its gains or profits to accumulate instead of being divided or distributed, such corporation shall not be subject to the tax imposed by section 230 of the Revenue Act of 1918, but the stockholders or members thereof shall be subject to taxation under Title 2 in the same manner as in the case of stockholders of a personal service corporation, except that the tax imposed by Title 3 of the Revenue Act of 1918 shall be deducted from the net income of the corporation before the proportionate share of each stockholder or member is computed (Section 220, Article 351).

LOSS ON INVENTORIES AND REBATES UPON SALES.

13. At the time of filing returns for the taxable year 1918, a claim for abatement may be filed based on the fact that a substantial loss has been sustained (whether or not actually realized by sale or other disposition) resulting from any material reduction (not due to temporary fluctuation) in the value of the inventory as at the end of such taxable year, or from the actual payment after the close of such taxable year of rebates in pursuance of contracts entered into during such year upon sales made during such year. In such case payment of the amount of the tax covered by such claim shall not be required until the claim is decided, but the taxpayer shall accompany his claim with a bond in double the amount of the tax covered by the claim, with sureties satisfactory to the Commissioner, conditioned for the payment of any part of such tax found to be due, with interest at the rate of 1 per cent per month.

14. If no such claim is filed with the return, but it is shown to the satisfaction of the Commissioner that during the taxable year 1919 the taxpayer has sustained a substantial loss of the character above described, then the amount of such loss shall be deducted from the net income for the taxable year 1918 and the taxes imposed for such year by Titles 2 and 3 of the Revenue Act of 1918 shall be redetermined accordingly. (See Section 234 (a) (14) and Article 261.) 2—8030

GENERAL INSTRUCTIONS

1. For complete instructions concerning the filling in of the schedules in this return, read the explanatory notes at the head thereof, and Part II of Regulations 45, relating to the income tax and war-profits and excess-profits tax on corporations. Copies of the regulations can be obtained from any collector of internal revenue or any bank.

RETURNS.

LIABILITY FOR FILING.

2. **Corporations generally.**—Every corporation, joint-stock company, association, and insurance company not specifically exempted by Section 231 of the revenue act of 1918, and having a net income for the taxable year of $3,000 or more, is subject to the war-profits and excess-profits tax and must file a complete return on this form.

3. A corporation, joint-stock company, association, or insurance company (not exempted by Section 231) having a net income less than $3,000 must also file a return on this form, filling that part of Schedule IV under the headings "Income tax" and (if necessary) "Adjustment of tax for fiscal year ended in 1918," and all the schedules called for on pages 2 and 3; and answering all questions on page 6.

4. **Foreign corporations.**—Foreign corporations subject to the law are required to make returns to the collector in whose district is located its principal office or agency through which is transacted the business in the United States. The gross income to be returned includes only the gross income from sources within the United States, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and all amounts received representing profits on the manufacture and disposition of goods within the United States. (See Articles 91, 92, 548, and 625 of Regulations 45.)

5. A foreign corporation should fill in and submit all the schedules called for on pages 2 and 3 of the return with respect to its income from sources within the United States, and should compute its income tax (Schedule IV), claiming, however, no specific exemption (Item 15). It should enter 50 per cent of its net income as its war-profits and excess-profits tax, pending determination by the Commissioner of the amount of tax assessable (see Instructions, page 1, paragraph 10).

6. **Partnerships and personal service corporations.**—Partnerships and personal service corporations must make a return on Form 1065. (See Article 624 of Regulations 45.)

CONSOLIDATED RETURNS.

7. Affiliated corporations, as defined in Section 240 of the Act and Articles 632 and 633 of the Regulations, must file a consolidated return. As provided in Article 632, the parent or principal reporting company must file the consolidated return on this form with the collector of the district in which its principal office is located. All supplementary and supporting schedules should be prepared in columnar form, one column being provided for each corporation included in the consolidation, so that the composition of consolidated net income and consolidated invested capital may be readily examined.

8. Subsidiary corporations and other affiliated corporations whose net income and invested capital are included in the return of a parent corporation or a principal reporting corporation must fill in and file Form 1122 with the collector in whose district their principal office is located.

PERIOD COVERED.

9. The taxable year is the calendar year 1918 or (if the corporation makes its return for a fiscal period of 12 months ending on the last day of some month other than December) the fiscal period ended in the calendar year 1918.

10. A corporation desiring to change the period for which its return is made from a calendar year to a fiscal year or vice versa, or from one fiscal year to another, must give written notice to the collector of such change and the reasons therefor at least 30 days before the due date of its return on the basis of its existing taxable year and at least 30 days before the due date of the return on the basis of the proposed taxable year. (See Articles 26 and 431 of Regulations 45 and Section 226 of the revenue act of 1918.)

11. A new form will be issued for corporations filing returns for fiscal years ending in 1919.

TIME AND PLACE FOR FILING.

12. Returns for the calendar year 1918 and for fiscal years ended in 1918 must be sent to the collector of internal revenue for the district in which the corporation's principal place of business is located so as to reach the collector's office on or before March 15, 1919, unless an extension of time has been granted.

13. If it is not possible to file a completed return on this form or on Form 1122, as the case may be, on or before March 15, 1919, an extension of time may be obtained by filing, on or before March 15, 1919, a tentative return and estimate of taxes assessable, in duplicate, on Form 1031 T, and remitting with such return at least one-fourth of the estimated taxes shown thereon.

14. In case of neglect to file either a completed return or a tentative return within the prescribed time the collector is authorized to grant an extension of not more than 30 days, *provided such neglect was due to absence or sickness*, and provided an application for such extension is made in writing prior to the expiration of the period for which an extension may be granted. In meritorious cases the Commissioner is authorized to grant a further extension; but no such further extension will be granted (except on account of absence or sickness), unless a tentative return has been filed on Form 1031 T and at least one-fourth of the estimated tax has been paid. (See Articles 442 to 444 of Regulations 45.)

SIGNATURES AND VERIFICATION.

15. Returns must be sworn to by the president, vice president, or other principal officer and by the treasurer or assistant treasurer of the corporation. The return of a foreign corporation having an agent in the United States shall be sworn to by such agent. If receivers, trustees in bankruptcy, or assignees are operating the property or business of the corporation, such receivers, trustees, or assignees shall execute the returns for such corporations, under oath.

PAYMENT OF TAXES.

16. The tax should be paid by sending or bringing with the return a check or money order drawn to the order of "Collector of Internal Revenue at [insert name of city and State]."

17. Do not send cash through the mail or pay it in person except at the office of the collector or a regularly established internal-revenue stamp office.

18. At least one-fourth of the tax is due at the same time that the return is due.

19. An additional amount sufficient to bring the total payments up to one-half of the tax must be paid on or before June 15, 1919.

20. An additional amount sufficient to bring the total payments up to three-fourths of the tax must be paid on or before September 15, 1919.

21. The entire remainder of the tax must be paid on or before December 15, 1919.

22. If any payment is not made when due, the entire unpaid balance of the tax will become due 10 days after demand therefor by the collector.

23. If you pay in cash, do not fail to get a receipt at the time of payment. If you pay by check or money order, your canceled check or your money-order receipt will service as a receipt.

PENALTIES.

UNDERSTATEMENT OF TAXES DUE TO NEGLIGENCE OR FRAUD.

24. If taxes are understated through negligence on the part of the taxpayer and without attempt to defraud, there shall be added as part of the tax 5 per cent of the total amount of the deficiency plus interest at the rate of 12 per cent per annum on the amount of the deficiency of each installment from the time the installment was due. If an understatement is false or fraudulent with intent to evade the tax, there shall be added as part of the tax 50 per cent of the amount of the deficiency.

FOR FAILING TO PAY TAX WHEN DUE.

25. If any tax remains unpaid after the date when it is due and for 10 days after notice and demand by the collector there shall be added as part of the tax the sum of 5 per cent of the amount due but unpaid, plus interest at the rate of 12 per cent per annum on such amount from the time it became due.

FOR FAILING TO MAKE RETURN ON TIME.

26. A penalty of not more than $1,000 attaches for failure to file a return or to pay the tax within the time required by law. If the failure is willful or an attempt is made to defeat or evade the tax, the penalty is $10,000 or imprisonment for not more than one year, or both, together with cost of prosecution.

Form 1096A—UNITED STATES INTERNAL REVENUE SERVICE

MONTHLY INFORMATION RETURN

PAYMENTS OF INTEREST ON BONDS OF DOMESTIC AND FOREIGN CORPORATIONS AND COUNTRIES AND DIVIDENDS ON STOCK OF FOREIGN CORPORATIONS

FOR MONTH OF....., 1919

THIS RETURN, ACCOMPANIED BY CERTIFICATES ON FORM 1001, 1001A, AND 1058, MUST BE MAILED TO THE COMMISSIONER OF INTERNAL REVENUE, SORTING DIVISION, WASHINGTON, D. C., ON OR BEFORE THE 20th DAY OF THE MONTH SUCCEEDING THAT FOR WHICH MADE	..... (Name of debtor organization) ..... (Full post-office address) ..... (Name of bank or paying agent) ..... (Full post-office address)	(Date received)

Class of Income	Number of Certificates	Total Amount of Payments.		
A. Interest on bonds and other similar obligations of domestic and resident corporations (provided tax was not withheld at source).....	(FORM 1001)	$.....	.....	.....
B. Interest on bonds and other similar obligations of domestic and resident corporations (provided tax was not withheld at source).....	(FORM 1058)	$.....	.....	.....
C. Interest on bonds of foreign corporations and countries and dividends on stock of foreign corporations.....	(FORM 1001A)	$.....	.....	.....

INSTRUCTIONS

A. A certificate on **Form 1001** should accompany this return for every payment of *interest on bonds and other similar obligations of domestic and resident corporations*, under the following conditions:

1. *Interest on bonds with tax-free-covenant clauses* paid to citizens and residents of the United States (individuals and fiduciaries) claiming personal exemption, domestic and resident corporations, and foreign corporations having an office or place of business in the United States.

   In the absence of ownership certificates made by individual owners of tax-free registered bonds the debtor organization shall prepare reports on Form 1000 and forward them to the collector with return Form 1012. If owned by a domestic corporation, or foreign corporation having an office or place of business in the United States, reports on Form 1001 should be prepared. When so used the forms need not be signed.

2. *Interest on bonds without tax-free-covenant clauses* paid to citizens and residents of the United States (individuals and fiduciaries), domestic and resident partnerships and corporations, nonresident alien partnerships, and foreign corporations having an office or place of business in the United States.

   In the case of registered bonds not having tax-free-covenant clauses the debtor organization will prepare reports on Form 1001 and forward them with this return to the Commissioner. When so used the form (1001) need not be signed.

B. Resident collecting agents, responsible banks and bankers receiving interest coupons presented by individual citizens or residents of the United States for collection, may detach certificate Form 1001 and forward it directly to the Commissioner of Internal Revenue, provided certificate Form 1058 (revised) is substituted for the certificate detached. The aggregate number of substitute certificates, Form 1058, should be entered by the debtor corporation on line B, in the column "Number of Certificates."

C. A certificate on **Form 1001A** should be required by individuals, partnerships, and corporations undertaking as a matter of business or for profit the collection of *interest on bonds of foreign corporations and countries and dividends on stock of foreign corporations* by means of coupons, checks, or bills of exchange for citizens and residents of the United States (individuals and fiduciaries), domestic and resident partnerships and corporations, and nonresident alien individuals, partnerships, and corporations.

If the payments consist of interest on bonds (and there is no paying agent in the United States), the last bank or collecting agent handling the item shall detach the certificate, Form 1001A, and forward it directly to the Commissioner of Internal Revenue, accompanied by a return on this form.

If the payments consist of dividends on stock of foreign corporations, the first bank or collecting agent receiving the certificate (Form 1001A) is required to detach and forward it directly to the Commissioner of Internal Revenue. The first bank shall indorse upon the foreign item "Certificate detached and information furnished (insert name and address of licensee)." Substitute certificates are not permitted to be used in the case of foreign items.

If bonds are owned jointly, separate certificates should be made by or for each joint owner. Fiduciaries must enter on the certificates under "Owner of bonds" the name of estate, trust, or beneficiary on behalf of whom the exemption is claimed. Licensed banks and collecting agents not acting as withholding or paying agents for debtor organizations may file one return on this form, making no entries in the spaces at the head of the form for name and address of debtor organization.

I CERTIFY that the foregoing return and the accompanying certificates constitute a true and complete statement of payments of the above-described classes of income made by the person or organization named at the head of this return, during the month stated above.

Dated .....

.....
(Signature)

.....
(Capacity in which acting)

.....
2—8500 (Address in full)

Form 1000.
Revised May, 1919.
U. S. Internal Revenue.

OWNERSHIP CERTIFICATE—TAX TO BE PAID AT SOURCE

INTEREST ON BONDS AND OTHER SIMILAR OBLIGATIONS OF DOMESTIC AND RESIDENT CORPORATIONS

NAMES MUST BE PRINTED OR WRITTEN PLAINLY.

DEBTOR ORGANIZATION

NAME .....

ADDRESS .....

OWNER OF BONDS (Give name in full)

NAME .....

STREET ADDRESS .....

POST OFFICE .....

Due date ..... Date paid .....

If owner is an individual, is he married? ..... If not, is he head of a family? .....

I certify that the owner of the bonds from which the interest entered herein was derived falls within the class of persons or organizations opposite which such interest is entered.

SIGNATURE OF OWNER OR AGENT

.....

Address of agent. .....

SEE INSTRUCTIONS ON FORM 1012

Tax should be withheld at rate indicated. 2—8829

Owner	Interest on Bonds and Similar Obligations: With tax-free-covenant clauses	Interest on Bonds and Similar Obligations: Without tax-free-covenant clauses	Tax Withheld[1]
Citizen or Resident of U. S.: 1. Individual or fiduciary (Personal exemption not claimed)	2% $.....	(Not subject to withholding Use Form 1001)	$.....
2. Partnership	2% $.....	(Not subject to withholding Use Form 1001)	$.....
Nonresident Alien: 3. Individual or fiduciary	2% $.....	8% $.....	$.....
4. Partnership	2% $.....	(Not subject to withholding Use Form 1001)	$.....
5. Corporation having no office or place of business in U. S.	2% $.....	10% $.....	$.....
6. Unknown	2% $.....	8% $.....	$.....

Form 1059.
Revised February, 1919.
U. S. INTERNAL REVENUE.

SUBSTITUTE CERTIFICATE—TAX TO BE PAID AT SOURCE

INTEREST ON BONDS AND OTHER SIMILAR OBLIGATIONS OF DOMESTIC AND RESIDENT CORPORATIONS

DEBTOR ORGANIZATION

NAME .....

ADDRESS .....

.....

NUMBER GIVEN ORIGINAL CERTIFICATE FORM 1000 .....

Date of maturity of interest.	Date paid.

I certify that the owner of the bonds from which were detached the accompanying interest coupons has filed a certificate of ownership, Form 1000, duly executed as required by Treasury Regulations, and I hereby promise to forward the said certificate to the Commissioner of Internal Revenue at Washington, D. C.

Name of bank or collecting agent .....

Name, address, and title of the person authorized to sign .....

SEE INSTRUCTIONS ON FORM 1012.

OWNER. (CITIZEN OR RESIDENT OF U. S.)	INTEREST ON BONDS WITH TAX-FREE-COVENANT CLAUSES.			TAX WITHHELD.	
1. Individual or fiduciary (Personal exemption not claimed)	$			$	
2. Partnership	$			$	

This certificate should be attached to interest coupons by the collecting agent as a substitute for the owner's certificate Form 1000.

2—8609

FORM 1122—UNITED STATES INTERNAL REVENUE SERVICE.

INFORMATION RETURN OF SUBSIDIARY OR AFFILIATED CORPORATION

WHOSE NET INCOME AND INVESTED CAPITAL ARE INCLUDED IN RETURN OF A PARENT OR PRINCIPAL REPORTING CORPORATION FOR PURPOSES OF INCOME AND PROFITS TAXES

FOR CALENDAR YEAR 1918

This Return Must Be Filed On or Before March 15, 1919 With the Collector of Internal Revenue For the District in Which the Subsidiary or Affiliated Corporation has its Principal Office.	OR Fiscal period begun ..... and ended ....., 1918 Name ..... Business address ..... (Street and number.) ..... (City or town.) (State.)	(Date Received)

1. Date incorporated..... Under laws of what State?.....
2. Kind of business.....
3. Par value of capital stock outstanding at beginning of taxable year: (*a*) common, $.....
   (*b*) preferred, $.....
4. Par value of capital stock held during the taxable year by (*a*) the parent corporation or (*b*) the same interest:

Periods in the Taxable Year During Which the Stock Held Remained Unchanged.		Par Value of Stock.		Periods in the Taxable Year During Which the Stock Held Remained Unchanged.		Par Value of Stock.	
From—	To—	Common.	Preferred.	From—	To—	Common.	Preferred.
		$	$			$	$

NOTE.—All stock should be designated as voting ("v.") or nonvoting ("n. v.").

5. Name of parent corporation.....
6. Address of parent corporation.....
7. Internal revenue district in which consolidated return has been filed.....
   (Give district, or city and State.)
8. If affiliation occurs through ownership of stock by the same interests, attach to this form a list showing the names and addresses of stockholders and amount and description of stock held by each.
9. State amount of income and profits taxes for the taxable year apportioned to the subsidiary or affiliated corporation making this return..... $.....

We, the undersigned, president and treasurer of the above-named subsidiary or affiliated corporation, being severally duly sworn, each for himself deposes and says that the foregoing return, including the accompanying list (if any), has been examined by him and is to the best of his knowledge and belief a true and complete return of information made in good faith pursuant to the Revenue Act of 1918 and the regulations thereunder.

SWORN to and subscribed before me this

.....day of....., 19.....

.....
President.

.....
(Name of officer.)

.....
2—8621 (Title.)

.....
Treasurer.

10-9-19.

Form 1012.—Revised February, 1919—UNITED STATES INTERNAL REVENUE SERVICE

MONTHLY RETURN OF NORMAL INCOME TAX TO BE PAID AT SOURCE

INTEREST ON BONDS AND OTHER SIMILAR OBLIGATIONS OF DOMESTIC AND RESIDENT CORPORATIONS AND FOREIGN CORPORATIONS HAVING A PAYING AGENT IN THE UNITED STATES

(To be used by paying agent of foreign corporation only in case the bonds contain a tax-free-covenant clause.)

FOR MONTH OF......, 1919

THIS RETURN, IN DUPLICATE, ACCOMPANIED BY CERTIFICATES ON FORM 1000 AND FORM 1059 MUST BE FILED WITH THE COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT IN WHICH THE WITHHOLDING AGENT IS LOCATED ON OR BEFORE THE 20TH DAY OF THE MONTH SUCCEEDING THAT FOR WHICH MADE	..... (Name of debtor organization.) ..... (Full post-office address.) ..... (Name of withholding agent.) ..... (Full post-office address.)	Date received

INSTRUCTIONS

If debtor organization makes its own withholding return, no entries need be made on lines provided above for name and address of withholding agent.

A return on this form must be made to cover the following classes of payments:

1. *Interest on bonds with tax-free-covenant clauses* paid to citizens and residents of the United States (individuals and fiduciaries) not claiming personal exemption, to domestic and resident partnerships, to nonresident alien individuals or fiduciaries, to foreign partnerships, and to foreign corporations having no office or place of business in the United States, or in case owner is unknown. A normal tax of 2 per centum is required to be withheld and paid at source in such cases.
2. *Interest on bonds without tax-free-covenant clauses:*
   (*a*) If paid to a nonresident alien individual, or in case owner is unknown, a normal tax of 8 per centum is required to be withheld and paid at source.
   (*b*) If paid to a foreign corporation having no office or place of business in the United States, a normal tax of 10 per centum is required to be withheld and paid at source.

A certificate on Form 1000 should accompany this return for every payment entered hereon.

In the absence of ownership certificates covering registered bonds owned by a person or organization falling within the classes named above, the debtor corporation shall prepare reports on Form 1000. When so used the forms need not be signed.

In the case of payments of interest on tax-free-covenant bonds to citizens and residents of the United States (individuals and fiduciaries) and to domestic and resident partnerships, resident collecting agents, and responsible banks and bankers receiving interest coupons for collection may detach certificate Form 1000 and forward it directly to the Commissioner of Internal Revenue provided certificate Form 1059 (revised) is substituted for the certificate detached. Substitute certificates Form 1059 should be listed by the debtor corporation on this return, the serial number given the original certificate being entered in the column "Name of Payee."

If coupons are received not accompanied by certificates of ownership, the first bank receiving such coupons will require of the payee an affidavit showing the following:

(*a*) Name and address of payee, (*b*) name and address of debtor corporation, (*c*) date of maturity of interest, (*d*) name and address of person from whom the coupons were received, (*e*) amount of interest, and (*f*) a statement that owner of bonds is unknown to him.

The first bank shall prepare Form 1000, crossing out "owner" and inserting "payee," entering the amount of interest, due date, and date paid in the proper spaces and stamping or writing across the face of the certificate, "Affidavit furnished (insert name of bank)."

The affidavit should accompany the ownership certificate to the Collector of Internal Revenue.

If bonds are owned jointly, separate certificates should be made by or for each joint owner. Fiduciaries must enter on the certificates under "owner of bonds" the name of estate, trust, or beneficiary on behalf of whom the exemption is claimed.

I certify that the following is a true and complete return of all payments of classes 1, 2(*a*), and 2(*b*) described above made, and of the amount of tax withheld during the month stated above by the above-named organization, the several items being evidenced by certificates listed below and inclosed herewith:

Class.	Interest Paid.	Tax Withheld.
1	$.....	$.....
2(*a*)		
2(*b*)		
Totals	$.....	$.....

.....
(Signature.)

.....
(Capacity in which acting.)

.....
(Address in full.)

Name of Payee.	Street and Number, Post Office and State.	Amount Paid.	Tax Withheld.
		$.....	$.....

CONTINUE ON FORM 1012A

62—3017

TREASURY DEPARTMENT,
INTERNAL REVENUE BUREAU
Form 1124.

INCOME AND PROFITS TAXES.

Bond under sections 214 (a) (12) and 234 (a) (14) of the Revenue Act of 1918.

KNOW ALL MEN BY THESE PRESENTS that ....., as principal, and ....., as surety, are held and firmly bound unto the United States of America in the sum of ..... dollars, lawful money of the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, at the time of filing his return of income for the taxable year 1918 the above-bounden principal has filed or is about to file a claim in abatement based on the fact that he has sustained a substantial loss resulting from a material reduction (not due to temporary fluctuation) of the value of his inventory for such taxable year or from the actual payment after the close of such taxable year of rebates in pursuance of contracts entered into during such year upon sales made during such year; and

WHEREAS, sections 214 (a) (12) and 234 (a) (14) of the Revenue Act of 1918 provide that in the case of such a claim payment of the amount of the tax covered thereby shall not be required until the claim is decided, but that the taxpayer shall accompany his claim with a bond in double the amount of the tax covered by the claim, with sureties satisfactory to the Commissioner, conditioned for the payment of any part of such tax found to be due, with interest, and it appears that the amount of this bond is double that of the tax covered by such claim in abatement:

NOW, THEREFORE, the condition of the foregoing obligation is such that if the principal shall on notice and demand by the collector duly pay any part of such tax found by the Commissioner to be due, with interest at the rate of twelve per cent per annum from the time such tax would have been due had no such claim been filed, and shall otherwise well and truly perform and observe all the provisions of law and the regulations, then this obligation is to be void, but otherwise to remain in full force and virtue.

WITNESS our hands and seals this ..... day of ....., 1919.

..... [L. S.]

..... [L. S.]
Signed, sealed and delivered in the presence of— *Principal.*

.... [L. S.]
Surety.

.....

BOND APPROVED this ..... day of ....., 1919.

.....
Commissioner of Internal Revenue.

2—6762

The Withholding Agent or Collector Receiving This Claim Shall Enter Date of Receipt in This Space.	TREASURY DEPARTMENT Form 1115—United States Internal Revenue Service	Do Not Write Here
	CLAIM BY NONRESIDENT ALIEN INDIVIDUAL For Benefit of Personal Exemption and Credit for Dependents FOR TAXABLE YEAR	

..... (Name of withholding agent.) ..... (Street and number.)

..... (City or town.) ..... (State.)

Claim is hereby made for benefit of the personal exemption and the credit for dependents (if any) provided under section 216 of the Revenue Act of 1918 by (or for)—

Name of claimant.....

Address in the United States. .....

1. Of what country are you a citizen or subject? .....
2. Are you single? ..... 3. Are you married and living with wife or husband? .....
4. Are you head of a family? ..... 5. If head of a family, give age and relationship of those dependent upon you .....
6. If married, has your wife or husband derived income during the taxable year to date from sources in the United States separate from your own? .....
7. If so, is such income included in the income stated below? .....
8. Have you filed a return of net income for all or any of the past four years? ..... 9. If so, state for which years and the Internal Revenue Districts in which filed .....

INCOME OF CLAIMANT, DURING TAXABLE YEAR TO DATE, FROM SOURCES WITHIN THE UNITED STATES.

(1) Salary or Wages.

Name of Employer.	Address.	Period.	Amount.	
			$	
				$

(2) Other Income.

Name of Source.	Address.	Period or Date.	Amount.	
			$	
				$

Total income of claimant, during taxable year to date, from sources within the United States (X) $.....

STATEMENT OF CREDITS CLAIMED.

Amount of credits claimed: Personal exemption, $..... Credit for dependents, $..... Total (Y) $.....

Total income of claimant, during taxable year to date, from sources within the United States (item X from above) .....

Balance of credit (item Y minus item X) ..... $.....

I swear (or affirm) that the above is, to the best of my knowledge and belief, a true and complete statement of facts in connection with the claim for credits above made.

.....

(If claim is made by agent the reason therefor must be stated on this line.)

Sworn to (or affirmed) and subscribed before me this

.....day of ..... 19.....

..... (Signature of individual or agent.)

..... (Official capacity.) [OVER.] ..... (Address of individual or agent.)

*2—2/23

PROVISIONS OF REGULATIONS 45 APPLICABLE TO THE USE OF THIS FORM.

APPLICABILITY OF CREDITS, UNDER SECTION 216 OF REVENUE ACT OF 1918, TO NONRESIDENT ALIEN EMPLOYEE.

ART. 316 (of Regulations 45). **Allowance of personal exemption to nonresident alien employee.**—A nonresident alien employee, provided he is entitled under section 216 of the statute (see the articles below, particularly the lists of countries in Article 307) to credit for a personal exemption or for dependents or both, may claim the benefit of such credit by filing with his employer this form, duly filled out and executed under oath. On the filing of such a claim the employer shall examine it. If on such examination it appears that the claim is in due form, that it contains no statement which to the knowledge of the employer is untrue, that such employee on the face of the claim is entitled to credit, and that such credit has not yet been exhausted, such employer need not until such credit be in fact exhausted withhold any tax from payments of salary or wages made to such employee. Every employer with whom affidavits of claim on this form are filed by employees shall preserve such affidavits until the following calendar year, and shall then file them, attached to his annual withholding return on Form 1042 (revised), with the Collector on or before March 1. In case, however, when the following calendar year arrives such employer has no withholding to return, he shall forward all such affidavits of claim directly to the Commissioner (Sorting Division), with a letter of transmittal, on or before March 15. Where any tax is withheld the employer in every instance shall show on the pay envelope or shall furnish some other memorandum showing the name of the employee, the date and the amount withheld. This article applies only to payments of compensation by an employer to an employee.

ART. 306 (of Regulations 45). **Credits to nonresident alien individual.**—A nonresident alien individual, similarly to a citizen or resident, is entitled for the purpose of the normal tax to credit * * * a personal exemption, and $200 for each dependent, except that if he is a citizen or subject of a country which imposes an income tax a personal exemption or credit for dependents is allowed him "only if such country allows a similar credit to citizens of the United States not residing in such country." "If such country allows a similar credit" means if such country in imposing its income tax allows a personal exemption or a credit for dependents, as the case may be, and allows it without discrimination to citizens of the United States not residing in such country. * * *

ART. 307 (of Regulations 45). **When nonresident alien individual entitled to personal exemption.**—(*a*) The following is an incomplete list of countries which either impose no income tax or in imposing an income tax allow both a personal exemption and a credit for dependents which satisfy the similar credit requirement of the statute: Argentina, Bosnia, Brazil, Canada, Carinthia, China, Cuba, Dalmatia, Denmark, France, Herzegovina, Istria, Mexico, Montenegro, Persia, Portugal, Roumania, Russia, Serbia, Union of South Africa. (*b*) The following is an incomplete list of countries which in imposing an income tax allow a personal exemption which satisfies the similar credit requirement of the statute, but do not allow a credit for dependents: Bachka, Banat of Temesvar, Croatia, Italy, Slavonia. (*c*) The following is an incomplete list of countries which in imposing an income tax do not allow to citizens of the United States not residing in such country either a personal exemption or a credit for dependents and, therefore, fail entirely to satisfy the similar credit requirement of the statute: Australia, Great Britain and Ireland, Japan, New Zealand, Spain. The former names of certain of these territories are here used for convenience, in spite of an actual or possible change in name or sovereignty. A nonresident alien individual who is a citizen or subject of any country in the first list is entitled for the purpose of the normal tax to such credit for a personal exemption and for dependents as his family status may warrant. If he is a citizen or subject of any country in the second list he is entitled to a credit for a personal exemption, but to none for dependents. If he is a citizen or subject of any country in the third list he is not entitled to credit for either a personal exemption or for dependents. If he is a citizen or subject of a country which is in none of the lists, then to secure credit for either a personal exemption or for dependents he must prove to the satisfaction of the Commissioner that his country does not impose an income tax or that in imposing an income tax it grants the similar credit required by the statute.

CREDITS UNDER SECTION 216 (*c*) AND (*d*) OF REVENUE ACT OF 1918.

PERSONAL EXEMPTION.

Status of Taxpayer.	Amount of Credit.
Married, and living with husband or wife (see Article 303, below)	$2,000
Head of a family (see Article 302, below)	$2,000
Married, and not living with husband or wife and not head of a family (see Articles 302–303, below)	$1,000
Single, and not head of a family (see Article 302, below)	$1,000

CREDIT FOR DEPENDENTS.

Status of Dependent.	Amount of Credit.
For each person (other than husband or wife) who is (1) (*a*) under 18 or (*b*) incapable of self-support because defective, and (2) is dependent upon, and receiving the chief support from, the taxpayer (see Article 304, below)	$200

ART. 302 (of Regulations 45). **Personal exemption of head of family.**—A head of a family is a person who actually supports and maintains in one household one or more individuals who are closely connected with him by blood relationship, relationship by marriage, or by adoption, and whose right to exercise family control and provide for these dependent individuals is based upon some moral or legal obligation. In the absence of continuous actual residence together, whether or not a person with dependent relatives is a head of a family within the meaning of the statute must depend on the character of the separation. If a father is absent on business or at war, or a child or other dependent is away at school or on a visit, the common home being still maintained, the additional exemption applies. If, moreover, through force of circumstances a parent is obliged to maintain his dependent children with relatives or in a boarding house while he lives elsewhere, the additional exemption may still apply. If, however, without necessity the dependent continuously makes his home elsewhere, his benefactor is not the head of a family, irrespective of the question of support. A resident alien with children abroad is not the head of a family.

ART. 303 (of Regulations 45). **Personal exemption of married person.**—In the case of a married man or married woman the joint exemption replaces the individual exemption only if the man lives with his wife or the woman lives with her husband. In the absence of continuous actual residence together, whether or not a man or woman has a wife or husband living with him or her within the meaning of the statute must depend on the character of the separation. If merely occasionally and temporarily a wife is away on a visit or a husband is away on business, the joint home being maintained, the additional exemption applies. The unavoidable absence of a wife or husband at a sanatorium or asylum on account of illness does not preclude claiming the exemption. If, however, the husband voluntarily and continuously makes his home at one place and the wife hers at another, they are not living together for the purpose of the statute, irrespective of their personal relations. A resident alien with a wife residing abroad is not entitled to the joint exemption.

ART. 304 (of Regulations 45). **Credit for dependents.**—A taxpayer receives a credit of $200 for each person (other than husband or wife), whether related to him or not and whether living with him or not, dependent upon and receiving his chief support from the taxpayer, provided the dependent is either (*a*) under eighteen or (*b*) incapable of self-support because defective. The credit is based upon actual financial dependency and not mere legal dependency. It may accrue to a taxpayer who is not the head of a family. But a father whose children receive half or more of their support from a trust fund or other separate source is not entitled to the credit.

62—6773

TREASURY DEPARTMENT,
U. S. INTERNAL REVENUE.
Form 47 A.—March, 1919.

CLAIM FOR CREDIT

TAXES PAID IN EXCESS

DATE OF FILING TO BE PLAINLY STAMPED HERE

State of .....
County of ..... } *ss:*

IMPORTANT
This claim should be forwarded to the Collector of Internal Revenue from whom notice of assessment was received.

Write Name so it can be easily read.

.....
(Name of claimant.)

.....
(Address of claimant; give street and number as well as city or town, and State.)

This deponent being duly sworn according to law, deposes and says that this claim is made on behalf of the claimant named above, and that the facts stated below with reference to said claim are true and complete.

1. Business engaged in by claimant .....
2. Character of assessment or tax .....
3. Amount of tax paid ..... $..... Taxable year .....
4. Portion of No. 3 claimed as a credit ..... $.....
5. Unpaid assessment against which credit is asked ..... $..... Taxable year .....

Deponent verily believes that the amount stated in item 4 should be credited, and claimant now asks and demands credit of said amount for the following reasons:

(State facts regarding alleged overpayment.)

.....
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.....
.....
.....

Sworn to and subscribed before me this

..... day of ....., 19.....

.....
(Title.)

Signed:

Write Name so it can be easily read.

.....
.....

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue without charge.) 2—8773

CERTIFICATES

I certify that an examination of the records of the Commissioner's Office shows the following facts as to the assessment and payment of the tax:

ASSESSMENT OVERPAID

NAME OF TAXPAYER.	CHARACTER OF ASSESSMENT AND PERIOD COVERED.	LIST.	YEAR.	MONTH.	PAGE.	LINE.	AMOUNT.		DATE PAID.

Assessment Clerk, Internal Revenue Bureau. *Collector of Internal Revenue.*

ASSESSMENT TO BE CREDITED

NAME AND ADDRESS.	CHARACTER OF ASSESSMENT OR ARTICLE TAXED.	PERIOD COVERED BY ASSESSMENT.	LIST.	YEAR.	MONTH.	PAGE.	LINE.	AMOUNT.

Assessment Clerk, Internal Revenue Bureau. *Collector of Internal Revenue.*

Form 47 A

District .....

Abatement Order No. .....

.....
(Nature of tax.)

Claimant .....

Address .....

Examined and submitted for action ....., *19*.....

Claim examined by—
Claim approved by—
Chief of Division.

Amount claimed, $.....

Amount allowed, $.....

Amount rejected, $.....

COMMITTEE ON CLAIMS:

.....

.....

.....

2—8775

DELIVER OR SEND THIS RETURN TO COLLECTOR OF INTERNAL REVENUE ON OR BEFORE JUNE 15, 1919

Form 1065—UNITED STATES INTERNAL REVENUE SERVICE

PARTNERSHIP AND PERSONAL SERVICE CORPORATION INCOME TAX RETURN

FOR CALENDAR YEAR 1918

OR

Fiscal Period begun ....., and ended ....., 1918

(Print plainly partnership's or corporation's name and address)

(Date received)

Examined by—

Audited by—

STATE WHETHER PARTNERSHIP OR CORPORATION .....

No tax is assessable on this return. The members' distributive shares of net income of partnerships for the full taxable period and of personal service corporations earned subsequent to December 31, 1917, are to be reported by the individual members thereof.

QUESTIONS.

KIND OF BUSINESS.

1. Explain below the nature of the partnership's or corporation's business in sufficient detail to show in which of the following general classes of activities it falls:

(1) Agriculture and related industries, including fishing; (2) mining, quarrying, and related industries; (3) manufacturing; (4) construction; (5) trading; (6) transportation; (7) storage; (8) other services; (9) banking and insurance.

2. If the business falls in any of the classes from 1 to 5, state the special product or products handled; if in class 5, state whether wholesale or retail, or both; if in class 6, state whether rail, water, or other, whether general or local, and the special commodities (if any) transported; if in class 7, state the special commodities stored (if any) or the special kind of storage; if in class 8, state in detail the kind of service rendered; if in class 9, state the branch of banking or insurance engaged in.

3. In all cases state whether the partnership or corporation acts as principal (using its own capital) or as agent or broker (on commission) or as both.

4. A personal service corporation must explain its business in sufficient detail to justify its claim to be classed as such. If necessary its statement should be made on a separate sheet, which should be firmly attached to this return.

(a) Main business .....

(b) Collateral businesses, if any.....

OTHER CONCERNS IN SAME BUSINESS.

5. Attach hereto a list of the names and addresses of five representative concerns in your locality or section of the country engaged in the same kind of business.

ORGANIZATION OR INCORPORATION.

6. Date of organization or incorporation; .....

7. If incorporated, under the laws of what State or country?.....

8. Are you a successor to or were you formed to take over or conduct part of the business of another organization? ..... If so, state name and address of predecessor or other organization, and in the latter case, the financial, managerial, and contractual relationships existing between yourselves and the other organization .....

VALUATIONS OF CAPITAL STOCK.

9. What was the fair value of the total capital stock of the corporation as determined in the last assessment of the capital stock tax (if any)? .....

Date of that assessment.....

BASIS OF VALUING INVENTORIES.

10. State here which of the methods described on page 2 of the Instructions, in the note under the heading "Schedule A2," was used in valuing inventories .....

INTEREST ON LIBERTY BONDS, ETC.

11. Enter in table at top of next column the maximum amount of Liberty Bonds and other obligations of the United States issued since September 24, 1917 (par value), held at any one time, from which interest was derived during the taxable period, together with the amount of such interest (see Instructions Schedule A4).

TABLE 11.

1. Class of Obligation.	2. Maximum Amount of Obligations.		3. Amount of Interest.	
(a) First Liberty Loan converted 4's and Second Liberty Loan unconverted (interest received since January 1, 1918)	$		$	
(b) First and Second Liberty Loans converted 4¼'s and Third Liberty Loan (dated May 9, 1918)				
(c) First Liberty Loan second converted 4¼'s (dated October 24, 1918)				
(d) Fourth Liberty Loan				
(e) Other obligations issued since September 24, 1917				
(f) Total	$		$	

AFFILIATIONS WITH CORPORATIONS.

(To be answered by every partnership or personal service corporation).

12. Do you own directly or control through closely affiliated interests or by a nominee or nominees over 50 per cent of the outstanding capital stock of a corporation or of other corporations? .....

13. Is over 50 per cent of your capital stock owned by another corporation or by two or more corporations that are affiliated? .....

14. Is over 50 per cent of your capital stock as well as over 50 per cent of the capital stock of another corporation or of other corporations owned or controlled by the same individual or partnership or by the same individuals or partnerships?.....

15. If any of the conditions indicated in 12, 13, or 14 exist, the following requirements must be complied with.

16. If the answer to Question 12 is "Yes," submit a statement showing for each of the corporations over 50 per cent of whose stock is owned or controlled by you, either directly or through closely affiliated interests or by a nominee or nominees:

(a) The name and address.
(b) The total par value of the outstanding capital stock at the beginning of the taxable year, and the date and amount of each change therein.
(c) The total par value of such outstanding capital stock owned or controlled by you at the beginning of the taxable year, or at the date of acquisition if acquired during the taxable year, and the date and amount of each change therein.

17. If the answer to Question 13 is "Yes," state—

(a) The name and address of such corporation or corporations.
(b) The par value and percentage of your stock held by each.

18. If the answer to Question 14 is "Yes," submit a statement showing—

(a) The names and addresses of such corporations.
(b) The name or names and address or addresses of the owning or controlling interest or interests.
(c) The total par value of the outstanding capital stock of each corporation at the beginning of the taxable year, and the date and amount of each change therein.
(d) The total par value of the outstanding capital stock of each corporation owned or controlled by each one of the several individuals or partnerships at the beginning of the taxable year, and the date and amount of each change therein.

LIST OF ATTACHED SCHEDULES.

19. Attach a list of schedules accompanying this return, giving for each a brief title and a schedule number. (See opening paragraph on page 2 of Instructions.)

COMPUTATION OF DISTRIBUTABLE INCOME.

20. Enter in the table below, in accordance with paragraphs 10 to 16, page 1 of Instructions, the income and credits to be accounted for by members of a partnership or shareholders of a personal service corporation filing a return for the calendar year 1918 or for a fiscal period ended in the calendar year 1918.

	2. Cash dividends.		3. Stock dividends.		4. Interest on Liberty Bonds, etc., issued since September 24, 1917.		5. Other income.		6. Income, war-profits, and excess-profits taxes paid or accrued to a possession of the U. S. or to a foreign country.	
(a) Total income for calendar or fiscal year computed under Revenue Act of 1918	$		$		$		$		$	
(b) Portion assignable to 1918 (for returns covering fiscal year ended in 1918)										
(c) Total income of partnership whose fiscal year began in 1917, computed under Revenue Acts of 1916-1917									X X X X X	X X
(d) Portion assignable to 1917 (for partnership whose fiscal year began in 1917)									X X X X X	X X

MEMBERS' SHARES OF INCOME, ETC.

21. Enter in the table below the name and address of each member of the partnership or shareholder of the personal service corporation and show the share of each in the income of the partnership or personal service corporation (whether received or not) and his share of any income, war-profits, and excess-profits taxes paid by the partnership or corporation to a possession of the United States or to a foreign country. (See page 1 of Instructions, paragraphs 17 to 21.)

1. Members of partnership or shareholders of personal service corporation.		2. Cash dividends.		3. Stock dividends.		4. Interest on Liberty Bonds, etc., issued since September 24, 1917.		5. Other income.		6. Income, war-profits, and excess-profits taxes paid or accrued to a possession of the U. S. or to a foreign country.	
Name and address of each.	Interest in partnership or number of shares held in corporation.										
		$		$		$		$		$	
Totals		$		$		$		$		$	

The undersigned, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is to the best of his knowledge and belief a true and complete return made in good faith pursuant to the Revenue Act of 1918 and the regulations issued thereunder.

Sworn to and subscribed before me this.....day of..... 19.....

Seal of officer making affidavit.

(Official capacity.)

3—8779

President of corporation.
Member of partnership.

Treasurer of corporation.

SCHEDULE A—INCOME TO BE ACCOUNTED FOR BY MEMBERS.

GROSS INCOME.

1. Gross sales, less returns and allowances ..... $
2. Less cost of goods sold, exclusive of expenses, repairs, and other items called for separately below (from Schedule A2) ..... $
3. Gross income from services or from operations other than trading or manufacturing, less allowances (from Schedule A3) .....
4. Interest on obligations of the United States issued since September 24, 1917 (from Table 11, page 1—see page 2 of Instructions under Schedule A4) .....
5. Interest from other sources (not including interest referred to in Schedule B, Item 6) (from Schedule A5) .....
6. Rentals .....
7. Royalties .....
8. Partnership's distributive share of net income earned since December 31, 1917, by personal service corporations (whether received or not) .....
9. Cash dividends on stock of domestic and resident corporations (excluding dividends on stocks of personal service corporations declared out of net income earned since December 31, 1917) (from Schedule A9) .....
10. Stock dividends on stock of domestic and resident corporations (excluding those of personal service corporations declared out of 1918 earnings) declared out of earnings accumulated in—
    (a) 1918, $..... (b) 1917, $..... (c) 1916, $..... (d) From March 1, 1913, to December 31, 1915, $..... Total .....
11. Dividends on stock of foreign corporations (from Schedule A11) .....
12. Gross income from all other sources (not including any amount in respect of sales of capital assets or miscellaneous investments—see Item 25, below) (from Schedule A12) .....
13. TOTAL OF ITEMS 1 TO 12 ..... $

DEDUCTIONS.

14. Ordinary and necessary expenses (except amounts reported in Item 2 above or called for separately below, and not including cost or value of capital assets or miscellaneous investments sold during taxable year—see Item 25) (from Schedule A14) ..... $
15. Compensation of members (including shareholders of personal service corporation who drew salaries therefrom and salaries, commissions, and other compensation in whatever form paid) (from Schedule A15) .....
16. Repairs (including labor, supplies, overhead, and other items properly chargeable to repairs) (from Schedule A16) .....
17. Interest (except on indebtedness incurred or continued to purchase or carry obligations or securities, other than obligations of the United States issued after September 24, 1917, the interest on which is wholly exempt from income tax) .....
18. Taxes (except Federal income, war-profits, and excess-profits taxes, taxes which are a credit under Section 222 or Section 238, and taxes assessed against local benefits of a kind tending to increase the value of the property assessed) .....
19. Debts ascertained to be worthless and charged off within the taxable year .....
20. Exhaustion, wear and tear (including obsolescence) (from Schedule A20) .....
21. Amortization of war facilities (from Schedule A21) .....
22. Depletion (if depletion is claimed, Form A (revised) of Mines and Minerals Section or Form N of Oil and Gas Section should be obtained from the Collector, filled in, and filed) .....
23. TOTAL OF ITEMS 14 TO 22 ..... $
24. DIFFERENCE BETWEEN ITEMS 13 AND 23 ..... $
25. Profit or loss on sales of capital assets and miscellaneous investments (from Schedule A25) ..... $
26. Losses sustained during the taxable year from fire, storm, or other casualty, or from theft, not compensated for by insurance or otherwise (from Schedule A26) (extend in last column net total of Items 25 and 26) .....
27. TOTAL TO BE ACCOUNTED FOR BY MEMBERS (TOTAL OF OR DIFFERENCE BETWEEN ITEM 24 AND ITEM 26, LAST COLUMN) ..... $

SCHEDULE B—RECONCILIATION OF NET PROFIT PER BOOKS WITH INCOME SHOWN ON LINE 27, SCHEDULE A.

1. Net profit for year per books, before any adjustments are made therein ..... $
2. Unallowable deductions:
   (a) Donations, gratuities, and contributions .....
   (b) Income, war-profits, and excess-profits taxes paid or accrued to the United States .....
   (c) Income, war-profits, and excess-profits taxes paid or accrued to a possession of the United States, or to a foreign country .....
   (d) Special improvement taxes .....
   (e) Furniture and fixtures, additions, or betterments treated as expenses on the books .....
   (f) Replacements covered by depreciation .....
   (g) Insurance premiums paid on the life of any partner, officer, or employee for the benefit of the partnership or corporation or the business .....
   (h) Interest on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917) the interest upon which is wholly exempt from income tax .....
   (i) Additions to reserves for bad debts, contingencies, etc. (to be detailed) .....
   (j) .....
   (k) .....
   (l) .....
   (m) .....
   (n) Other unallowable deductions (to be detailed) .....
   (o) .....
   (p) .....
3. Partnership's distributive share of net income earned since December 31, 1917, by personal service corporations not received or accrued on books .....
4. Amount necessary to adjust book profit or loss with the amounts reported in Items 25 and 26, Schedule A (unless entry belongs on line 8) .....
5. TOTAL ..... $

6. Income not to be accounted for by members:
   NOTE.—Submit a statement for each of the obligations included in items (a), (b), and (c) showing (1) the description, (2) total (par value) held, and (3) the total amount of interest derived therefrom.
   (a) Interest on obligations of the United States issued before September 24, 1917, and on obligations of its possessions ..... $
   (b) Interest on obligations of States, Territories, and political subdivisions thereof .....
   (c) Interest on Farm Loan Bonds issued under Federal Farm Loan Act .....
   (d) Other items of nontaxable income (to be detailed) .....
   (e) .....
   (f) .....
   (g) .....
7. Charges against reserves for bad debts, contingencies, etc. (to be detailed) .....
   (a) .....
   (b) .....
8. Amount necessary to adjust book profit or loss with the amounts reported in Items 25 and 26, Schedule A (unless entry belongs on line 4) .....
9. Income to be accounted for by members (Item 27, Schedule A) .....
10. TOTAL ..... $

SCHEDULE C—BALANCE SHEETS.

Attach hereto balance sheets as of the beginning and end of the taxable year (preferably in parallel columns), showing as nearly as practicable the details called for below:

ASSETS.

Cash (including cash in bank and on hand, certificates of deposit, etc.).
Trade accounts and notes receivable (before deducting reserves for losses).
Other accounts and notes receivable (to be classified).
Inventories:
- Raw materials.
- Work in process.
- Finished products.
- Supplies.

Investments:
- U. S. bonds and obligations (each issue to be stated separately).
- Stock of corporations—
  - Foreign.
  - Domestic.
- Bonds—
  - Exempt (municipal, State, etc.).
  - Other.

Loans and advances:
- To members and employees.
- To others.

ASSETS (Continued).

Deferred charges to future operations.
Fixed assets:
- Land.
- Buildings.
- Machinery.
- Tools and minor equipment.
- Delivery equipment.
- Office furniture.
- Other (state character).
- TOTAL.
- Less reserve for depreciation.
- NET VALUE.

Patents, good will, and other intangible assets:
- Paid for in cash or other tangible property.
- Paid for in stock (other than stock dividends) or in shares of a partnership.
- Created by stock dividend or otherwise.

Discount:
- On bonds.
- On stock.
- TOTAL.

LIABILITIES.

Notes payable:
- To members.
- To others (including bank loans).

Accounts payable:
- Trade.
- Other.

Accrued expenses and reserves, the charges creating which are allowable deductions from income (to be detailed).
Reserve for losses on notes and accounts receivable.
Reserves for contingencies, etc., the charges creating which are not allowable deductions from income (to be detailed).
Capital stock outstanding (to be classified) or **all partners' capital and current accounts** (to be detailed).
Surplus and undivided profits.
- TOTAL.

SCHEDULE D—ANALYSIS OF SURPLUS OR PARTNERSHIP NET WORTH ACCOUNTS.

Attach hereto an analysis of the surplus or partnership net worth accounts, showing the details of all changes therein during the taxable year, as nearly as practicable in the following form:

1. Surplus or partnership net worth at beginning of year per books.
Add: 2. Total net profit per books and per Schedule B (Item 1).
3. Other credits (to be detailed).
4. Total of Items 1, 2, and 3.
Deduct: 5. Withdrawals or dividends (state date dividends payable, amount of each, and whether in cash or in stock).
6. Other debits (to be detailed).
7. Surplus or partnership net worth at end of year per books.

GENERAL INSTRUCTIONS.

PARTNERSHIPS AND PERSONAL SERVICE CORPORATIONS REQUIRED TO MAKE A RETURN OF INCOME.

1. *Partnerships.*—Every domestic partnership and every foreign partnership doing business in the United States must make a return of income on this form regardless of the amount of its gross or net income. (See Regulations 45, Articles 321, 1503, and 1505 to 1507 and 1509.)

2. *Personal service corporations.*—Every personal service corporation, as defined below, must make a return of income on this form regardless of the amount of its gross or net income. (See Article 624 of Regulations 45.)

3. *Personal service corporation defined.*—The term "personal service corporation" means a corporation, not expressly excluded, the income of which is derived from a profession or business (*a*) which consists principally of rendering personal service, (*b*) the earnings of which are to be ascribed primarily to the activities of the principal owners or stockholders (who are referred to in this return as "*members*"), and (*c*) in which the employment of capital is not necessary or is only incidental. No definite and conclusive tests can be prescribed by which it can be finally determined in advance of an examination of the corporation's return whether or not it is a personal service corporation. The general principles under which such determination will be made are laid down in Articles 1523 to 1532 of Regulations 45.

4. *Corporations excluded.*—The following classes of corporations are expressly excluded from classification as personal service corporations: (*a*) foreign corporations; (*b*) corporations 50 per cent or more of whose gross income consists of gains, profits, or income derived from trading as a principal; and (*c*) corporations 50 per cent or more of whose gross income consists of gains, profits, commissions, or other income derived from a Government contract or contracts made between April 6, 1917, and November 11, 1918, inclusive.

5. *More than one business.*—A corporation engaged in two or more professions or businesses which are more or less related, one of which does not consist of rendering personal service, is not a personal service corporation unless the nonpersonal service element is negligible or merely incidental and no appreciable part of its earnings are to be ascribed to such sources. (See also Section 303 of the Statute.)

6. *Activities of stockholders.*—In determining whether a corporation is a personal service corporation, no weight can be given to the fact that it renders personal services unless (*a*) the principal owners or stockholders are regularly engaged in the active conduct of its affairs and are engaged in such a manner that the earnings are to be ascribed primarily to their activities, and (*b*) its affairs are conducted principally by such owners or stockholders. If employees contribute substantially to the services rendered by a corporation, it is not a personal service corporation unless in every case in which services are so rendered the value of and the compensation charged for such services are to be attributed primarily to the experience or skill of the principal owners or stockholders.

7. *Stock interest of active members.*—No corporation or its owners or stockholders shall make a return in the first instance on the basis of its being a personal service corporation unless at least 80 per cent of its stock is held by those regularly engaged in the active conduct of its affairs.

8. *Capital.*—In determining whether a corporation is a personal service corporation, no weight can be given to the fact that the invested capital of the corporation under Title III of the statute or the actual investment of the principal owners or stockholders is comparatively small. If the use of capital is necessary or more than incidental, capital is a material income-producing factor and the corporation is not a personal service corporation.

AFFILIATION OF PERSONAL SERVICE CORPORATIONS

9. In order to come under the provisions of Section 218 (*e*) of the Law, and the Regulations relating thereto, a personal service corporation must normally be owned by individuals. Ordinarily affiliation of a so-called personal service corporation with another corporation sets up a presumption that such personal service corporation is merely a department or unit of another business organization. The income of such a corporation shall be included with the income of the corporation or corporations owning its stock. A personal service corporation return will not be accepted if (*a*) the so-called personal service corporation is in effect merely the selling agency of another corporation or other corporations, or (*b*) the so-called personal service corporation is used for the purpose of performing any part of the service incident to the business of an affiliated corporation principally engaged in trade, or in contracting or manufacturing.

INSTRUCTIONS FOR FILLING IN TABLE 20, PAGE 1.

10. *Returns of partnerships and personal service corporations for calendar year 1918.*—On line (*a*) enter in column 2 the amount of Item 9, Schedule A; in column 3, the amount of Item 10 (*a*), Schedule A; in column 4, the amount of Item 4, Schedule A; in column 5, the amount of Item 27, Schedule A, less the total of Items 4, 9, and 10 of that Schedule; in column 6, the amount of 2 (*c*), Schedule B.

11. *Returns of partnerships and personal service corporations for fiscal period beginning in 1917.*—On line (*a*) enter in column 2 the amount of Item 9, Schedule A; in column 3, the amount of Item 10, Schedule A; in column 4, the amount of Item 4, Schedule A; in column 5, the amount of Item 27, Schedule A, less the total of Items 4, 9, and 10 of that Schedule; in column 6, the amount of 2 (*c*), Schedule B.

12. On line (*b*) enter in columns 2, 4, 5, and 6 as many twelfths of the amounts entered in the same columns on line (*a*) as the number of months of the partnership's or corporation's fiscal year that fell in the calendar year 1918. On line (*b*) column 3, enter the same number of twelfths of Items 10 (*a*), Schedule A.

NOTE.—Lines (*c*) and (*d*) should be used only by partnerships having fiscal periods beginning in 1917.

13. On line (*c*) of Table 20 enter in columns 2 and 3 the total cash dividends and the total stock dividends, respectively, included in Schedule H, columns 2 to 6, inclusive, of the partnership return for the fiscal period ended in 1918, filed under the Revenue Acts of 1916–1917; in column 4, the amount of Item 4, Schedule A of this return; in column 5, the amount of Item K of the partnership return filed under the Revenue Acts of 1916–1917, less the amounts entered in Schedule E, column 7, and Schedule H, columns 2 to 6, inclusive, and plus the amount entered in Schedule E, column 6, of that return.

14. On line (*d*) of Table 20, enter in columns 2 and 3 as many twelfths of the cash dividends and stock dividends, respectively, entered in Schedule H, column 6, of the partnership return filed under the Revenue Acts of 1916–1917, as the number of months of the partnership's fiscal year that fell in the calendar year 1917. On line (*d*) enter in columns 4 and 5 the same number of twelfths of the amounts entered in the same columns on line (*c*).

15. If the partnership having a fiscal year ended in 1918 made no return under the Revenue Acts of 1916–1917, a return prepared in accordance with the provisions of those Acts must be prepared and filed with this return (see par. 27 below). The principal differences between the provisions of the Revenue Acts of 1916–1917 and that of 1918 are:

Amortization of war facilities and obsolescense of plant and equipment are deductible under the 1918 Act but not under the 1916–1917 Acts.

Income, war profits, and excess-profits taxes paid or accrued to foreign countries or possessions of the United States are deductible from gross income under the 1916–1917 Acts but not under the 1918 Act (under which they are treated as a credit against taxes).

All interest on indebtedness incurred or continued to purchase or carry obligations of the United States issued since September 24, 1917, is deductible under the Revenue Act of 1918, while under the Revenue Acts of 1916–1917 such interest is treated as a deduction from the interest received on such obligations (see page 2 of Instructions under Schedule A4).

Under the 1916–1917 Acts, cash dividends accumulated in 1913 to 1917 are taxable at the rates applicable to the year in which the dividends were accumulated, while under the 1918 Act all such dividends are taxable at the rates for the taxable year in which received.

16. If the fiscal period of the partnership included fractions of months, add to the number of twelfths taken under paragraphs 12 and 14, above, as many thirtieths of one-twelfth as there are days in such fractions of months.

INSTRUCTIONS FOR FILLING IN TABLE 21, PAGE 1.

17. This table is to be used for showing the share of each partner or member in the income of the partnership or personal service corporation, whether received or not.

18. *Returns of partnerships and personal service corporations for calendar year 1918.*—Enter separately the share of each member in each of the following:

(*a*) Income, etc., computed under the Revenue Act of 1918 (line (*a*), Table 20 of this return).

(*b*) Stock dividends accumulated in 1917 (Item 10 (*b*), Schedule A of this return).

(*c*) Stock dividends accumulated in 1916 (Item 10 (*c*), Schedule A of this return).

(*d*) Stock dividends accumulated in 1913, 1914, and 1915 (Item 10 (*d*), Schedule A of this return).

19. *Return of partnerships for fiscal period beginning in 1917.*—Enter separately the share of each partner in each of the following:

(*a*) Income, etc., computed under the Revenue Act of 1918 (line (*b*), Table 20 of this return).

(*b*) Income computed under the Revenue Acts of 1916–1917 (line (*d*), Table 20), plus as many twelfths of stock dividends accumulated in 1917 (Item 10 (*b*), Schedule A of this return) as the number of months of the fiscal year that fell in 1918.

(*c*) Income computed under the Revenue Act of 1916 (Item 10 (*c*), Schedule A of this return), plus as many twelfths of the cash dividends accumulated in 1916 (included in column 5 of Schedule H of the 1917 return form), as the number of months of the fiscal year that fell in 1917.

(*d*) Income computed under the Revenue Act of 1913 (Item 10 (*d*), Schedule A of this return), plus as many twelfths of the cash dividends accumulated in the years 1913, 1914, and 1915 (included in columns 2, 3, and 4 of Schedule H of the 1917 return form), as the number of months of the fiscal year that fell in 1917.

20. *Returns of personal service corporations for the fiscal period beginning in 1917.*—Enter separately the share of each member in each of the following:

(*a*) Income, etc., computed under the Revenue Act of 1918 (line (*b*), Table 20 of this return).

(*b*) As many twelfths of the stock dividends accumulated in 1917 (Item 10 (*b*), Schedule A), as the number of months of the fiscal year that fell in 1918.

(*c*) As many twelfths of the stock dividends accumulated in 1916 (Item 10 (*c*), Schedule A), as the number of months of the fiscal year that fell in 1918.

(*d*) As many twelfths of the stock dividends accumulated in 1913, 1914, and 1915 (Item 10 (*d*), Schedule A), as the number of months of the fiscal year that fell in 1918.

21. If the space provided in Table 21 is insufficient in which to make the necessary entries, attach a supplemental table in the same form as Table 21.

CREDIT FOR INCOME, WAR-PROFITS, AND EXCESS PROFITS TAXES PAID OR ACCRUED TO A FOREIGN COUNTRY OR TO A POSSESSION OF THE UNITED STATES.

22. If a credit is claimed in column 6 of Tables 20 and 21, a copy of Form 1118, completely filled out and sworn to or affirmed, must be submitted with this return. If credit is sought for taxes already paid, the form must have attached to it the receipt for each such tax payment. If credit is sought for taxes accrued, the form must have attached to it the return on which each such accrued tax was based. (See Article 611 of Regulations 45).

23. When a credit is claimed for accrued taxes, the Commissioner may, as a condition precedent to the allowance of this credit, require the taxpayer to give a bond (Form 1119), with sureties satisfactory to and to be approved by him, in such penal sum as he may require, conditioned for the payment by the taxpayer of any amount of taxes found due if the taxes when paid differ from the amount claimed in respect thereof.

PERIOD COVERED.

24. The taxable year is the calendar year 1918 or (if the partnership or corporation makes its return for a fiscal period of 12 months ending on the last day of some month other than December) the fiscal period ended in the calendar year 1918.

25. A partnership or corporation desiring to change the period for which its return is made from a calendar year to a fiscal year or vice versa, or from one fiscal year to another, must give written notice to the Collector of such change and the reasons therefor at least 30 days before the due date of its return on the basis of its existing taxable year and at least 30 days before the due date of the return on the basis of the proposed taxable year. (See Articles 26, 322–324, 411, and 431 of Regulations 45, and Section 226 of the Revenue Act of 1918.)

26. A new form will be issued for partnerships and corporations filing returns for fiscal years ending in 1919.

TAX FOR FISCAL YEAR ENDED IN 1918.

27. If the partnership or personal service corporation has paid income or excess-profits tax for a fiscal year ended in 1918, it should file a claim on Form 46 (which can be obtained from the Collector) for the refund of as many twelfths of the tax paid as the number of months of the fiscal year that fell within the calendar year 1918.

28. If a return has been filed showing the tax due under the revenue acts of 1916–1917 for a fiscal year ended in 1918 and the tax has not been paid, a claim should be filed on Form 47 (which can be obtained from the Collector) for the abatement of as many twelfths of the tax due, as shown by that return, as the number of months of the fiscal year that fell within the calendar year 1918.

29. If no return has been filed by a partnership or personal service corporation having a fiscal year ended in 1918, there should be filed (in addition to a return on this form) a return on Form 1065 (with Form 1102 if required) or Form 1031 (with Form 1103 if required) as issued for 1917, and the tax due under the revenue acts of 1916–1917 should be ascertained by taking as many twelfths of the tax computed according to the instructions on the forms as the number of months of the fiscal year that fell in the calendar year 1917

30. See also paragraph 16.

TIME AND PLACE FOR FILING.

31. Returns for the calendar year 1918 and for fiscal years ended in 1918 must be sent to the Collector of Internal Revenue for the district in which the partnership's or corporation's principal place of business is located so as to reach the Collector's office on or before June 15, 1919, an extension of time having been granted. (See Articles 441 to 448, Regulations 45.)

SIGNATURES AND VERIFICATION.

32. Returns of partnerships must be sworn to by a member of the partnership. Corporation returns must be sworn to by the president, vice president, or other principal officer and by the treasurer or assistant treasurer of the corporation If receivers, trustees in bankruptcy, or assignees are operating the property or business of the partnership or corporation, such receivers, trustees, or assignees shall execute the return under oath.

PENALTY FOR FAILURE TO FILE RETURN ON TIME.

33. A penalty of not more than $1,000 attaches for failure to file a return within the time required by law. If the failure is willful or an attempt is made to defeat or evade the tax, the penalty is $10,000 or imprisonment for not more than one year, or both, together with costs of prosecution.

LOSSES ON INVENTORIES AND REBATES ON SALES.

34. At the time of filing the individual income tax returns of members of partnerships for the taxable year 1918, a claim for abatement may be filed, based on the fact that a substantial loss has been sustained by the partnership (whether or not actually realized by sale or other disposition) resulting from any material reduction (not due to temporary fluctuations) in the value of the inventory of the partnership as at the end of such taxable year, or from the actual payment by the partnership after the close of such taxable year of rebates in pursuance of contracts entered into by the partnership during such year upon sales made by it during such year. The amount that may be claimed by an individual member of the firm is that proportion of the total loss sustained by the partnership which his distributive interest in its profits bears to its total profits. In such case payment of the amount of the tax covered by such claim shall not be required until the claim is decided, but the taxpayer shall accompany his claim with a bond in double the amount of the tax covered by the claim with sureties satisfactory to the Commissioner, conditioned for the payment of any part of such tax found to be due, with interest at the rate of 1 per cent a month.

35. If no such claim is filed with the return, but it is shown to the satisfaction of the Commissioner that during the taxable year 1919 the partnership has sustained a substantial loss of the character above described, then the distributive shares of the individual members of the partnership in such loss shall be deducted from their respective distributive shares in the net income of the partnership for the taxable year 1918 and the taxes imposed upon them for such year by Title II of the Revenue Act of 1918 shall be redetermined accordingly. (See Section 214 (*a*) (12) and Articles 261 to 268.)

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SCHEDULES SUPPORTING SCHEDULE A.

The schedules called for below should be prepared and firmly stapled to this return. Designate each schedule with the number of the item in Schedule A which it explains. Make schedules on paper of uniform size so far as practicable. Attach a list of schedules accompanying this return, giving for each a brief title and schedule number.

SCHEDULE A2: COST OF GOODS SOLD, EXCLUSIVE OF EXPENSES, REPAIRS, AND OTHER ITEMS CALLED FOR SEPARATELY.

In support of Item 2, Schedule A, partnerships or corporations engaged in manufacturing or trading operations should submit an analysis, in reasonable detail, of the cost of goods sold. This statement should ordinarily include the following items but should not include any expense items called for separately in Schedule A.

1. Inventories at beginning of period (to be reconciled with balance sheet).
2. Purchases during period.
3. Labor and wages ordinarily charged to manufacturing cost on the partnership's or corporation's books, showing the principal items separately.
4. Other expenses ordinarily charged to manufacturing cost on the partnership's or corporation's books. (State separately large or unusual items.)
5. TOTAL.

Deduct:

6. Inventories at close of period (to be reconciled with balance sheet).
7. Cost of goods sold (Item 5 less Item 6).

NOTE.—Inventories should be valued at (*a*) cost or (*b*) cost or market, whichever is lower. A taxpayer may, regardless of his past practice, adopt the basis of cost or market, whichever is the lower, for his 1918 inventory, provided a disclosure of the fact and that it represents a change is made in the return. Whichever basis is adopted must be applied to each item of the inventory. Inventories should be recorded in a legible manner, properly computed and summarized, and should be preserved as a part of the accounting records of the taxpayer. (See Articles 1581 to 1585 of Regulations 45.)

SCHEDULE A3: GROSS INCOME FROM SERVICES AND OPERATIONS OTHER THAN TRADING OR MANUFACTURING, LESS ALLOWANCES.

Submit a schedule showing the nature and amount of the principal items included in Item 3, Schedule A.

SCHEDULE A4: INTEREST ON OBLIGATIONS OF UNITED STATES ISSUED SINCE SEPTEMBER 24, 1917.

Enter in Table 11, page 1, the maximum amount of Liberty Bonds and other obligations of the United States issued since September 24, 1917 (par value), held at any one time, from which interest was derived during the taxable period, together with the amount of such interest.

Information regarding the amount of partnership's or corporation's holdings of obligations of the United States issued since September 24, 1917, and the interest received therefrom must be furnished in sufficient detail to enable the members of the partnership or personal service corporation to fill in Table 13, Form 1040, and the schedules called for in Instruction K (*b*) on Form 1040.

A partnership making a return for a fiscal year ended in 1918 should submit a statement showing (*a*) the interest, if any, paid on indebtedness incurred or continued to purchase or carry obligations of the United States issued after September 24, 1917, and (*b*) each partner's share of such interest paid.

Each partner may deduct from his taxable Liberty Bond interest assignable to 1917 (computed as directed in Instruction K (*b*), Form 1040) such proportion of the interest paid on indebtedness incurred or continued to purchase or carry the bonds (as reported in response to (*b*) of the foregoing paragraph) as his taxable Liberty Bond interest assignable to 1917 is of the total interest on Liberty Bonds, etc., issued since September 24, 1917, which he received through the partnership. The balance after this deduction is made should be entered on Form 1040 as Item 14 (*b*), column 6.

SCHEDULE A5: INTEREST FROM OTHER SOURCES (not including interest referred to in Schedule B, Item 6).

Submit a schedule showing the source, nature, and amount of the principal items included herein, the minor items being grouped in one figure. The total of the schedule should be entered as Item 5, Schedule A.

For interest on foreign bonds show (*a*) name of country; (*b*) kind of obligations (whether national, State, municipal, or corporate obligations); (*c*) amount of principal; and (*d*) amount of interest.

SCHEDULE A9: CASH DIVIDENDS ON STOCK OF DOMESTIC AND RESIDENT CORPORATIONS.

Submit a schedule showing (*a*) name of corporation; (*b*) State in which organized; (*c*) total par value of stock held; and (*d*) amount of dividends.

SCHEDULE A11: DIVIDENDS ON STOCK OF FOREIGN CORPORATIONS.

Submit a schedule showing (*a*) name of corporation; (*b*) country in which organized; (*c*) total par value of stock held; and (*d*) amount of dividends.

SCHEDULE A12: GROSS INCOME FROM ALL OTHER SOURCES (not including any amount in respect of sales of capital assets or miscellaneous investments).

Submit a schedule showing the source, nature, and amount of the principal items included herein, the minor items being grouped in one figure. The total of the schedule should be entered as Item 12, Schedule A.

SCHEDULE A14: ORDINARY AND NECESSARY EXPENSES (except amounts called for separately in Schedule A and not including cost or value of capital assets or miscellaneous investments sold during taxable year).

Submit a statement showing character and amount of the principal items included in Item 14, Schedule A.

SCHEDULE A15: COMPENSATION OF MEMBERS OF THE PARTNERSHIP OR CORPORATION.

Submit a schedule showing for each member of the partnership or for each shareholder who draws a salary from the corporation or is engaged in its business, (1) name, (2) duties, (3) time devoted to such duties, and (4) total annual compensation for each of the years 1916, 1917, and 1918. A personal service corporation should also explain fully the manner and degree in which the earnings of the corporation are dependent on the activities of the active shareholders or "members."

SCHEDULE A16: REPAIRS (including labor, supplies, overhead, and other items properly chargeable to repairs).

Submit a schedule showing the nature and amount of the principal items included in Item 16, Schedule A.

Incidental repairs, which do not add to the value or appreciably prolong the life of property, are deductible as expenses. Expenditures for new buildings or for permanent improvements or betterments which increase the value of the property are chargeable to capital account. Expenditures for restoring or replacing property are not deductible under this or any other item of the return. Such expenditures are chargeable to capital account or to depreciation reserves, depending on the treatment of depreciation on the books of the taxpayer.

SCHEDULE A20: EXHAUSTION, WEAR AND TEAR (including obsolescence).

Submit a columnar schedule containing, substantially the following information:

1. A classification of depreciable assets subdivided on the bases of (*a*) character, (*b*) term of useful life.
2. The fair market value of such assets March 1, 1913, if acquired before that date.
3. The cost of such assets if acquired after February 28, 1913.
4. The estimated life or term of reasonable usefulness of such assets from date acquired or from March 1, 1913, as the case requires. Give reasons for your conclusions.
5. For each class of assets state—
   (*a*) The total amount of depreciation from March 1, 1913, to the beginning of the taxable year.
   (*b*) The total amount of depreciation (exhaustion, wear and tear, including obsolescence) claimed for the taxable year.
6. A reconciliation of all figures shown in this schedule with corresponding figures reflected in the balance sheets.

SCHEDULE A21: AMORTIZATION OF WAR FACILITIES.

If amortization of war facilities is claimed the taxpayer is required to submit with this return the information and schedules called for in Articles 181 to 188 of Regulations 45.

SCHEDULES A25 and A26: PROFIT OR LOSS ON SALES OF CAPITAL ASSETS and miscellaneous investments, and losses sustained during the taxable year from fire, storm, or other casualty, or from theft, not compensated for by insurance or otherwise.

Submit a columnar schedule setting forth for each sale of capital assets or of miscellaneous investments and for each loss during the taxable year the information called for below:

1. Description of property sold or of property in respect of which a loss is claimed.
2. Date acquired.
3. Fair market price or value on March 1, 1913, if acquired before that date, or cost if acquired after February 28, 1913.
4. Cost of improvements [illegible], since February 28, 1913, or since date of acquisition, if acquired after February 28, 1913.
5. Total of Items 3 and 4.

   Less—
6. Depreciation or depletion of property subject thereto—
   (*a*) Per books.
   (*b*). Accrued [illegible] on books.
7. Salvage value [illegible] of property on which a loss is claimed.
8. Amount of insurance or other recovery on property, if any.
9. Proceeds of [illegible] cash value of property received in exchange (for transactions falling in Item 23, Schedule A) (see Note).
10. Total of Items 6 to 9, inclusive.
11. Profit or loss.
12. Cause of loss (for losses falling in Item 26, Schedule A).

NOTE.—Submit evidence substantiating the basis used by you in arriving at the cash value of property received in exchange for other property.

WORKING PAPERS.

Every partnership or corporation should preserve, available for inspection by a revenue officer, working papers showing—

1. The balance in each account on the partnership's or corporation's books that was used in preparing Schedule A.
2. The amount deducted from each such balance on account of each class of nontaxable income, unallowable deductions, and other adjustments indicated in Schedule B, with a reference to the number of the item in Schedule B in which each amount so deducted was included.
3. The remainder of each such balance, analyzed to show the amount included in each Item of Schedule A, with a reference to the number of the item in Schedule A in which each such amount was included.

CAPITAL EMPLOYED IN BUSINESS.

If the balance sheet (Schedule C) of a personal service corporation indicates that a substantial amount of capital (invested or borrowed) is employed in the business, submit a statement explaining why the employment of such capital is incidental and not necessary.

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THIS RETURN IS NOT THE BASIS OF ASSESSMENT AND IS NOT TO BE USED FOR ESTATES IN PROCESS OF ADMINISTRATION.

DELIVER OR SEND THIS RETURN TO COLLECTOR OF INTERNAL REVENUE ON OR BEFORE JUNE 15, 1919.

Page 1 of Return.

(Date received.

Form 1041.—UNITED STATES INTERNAL REVENUE SERVICE.

FIDUCIARY INCOME TAX RETURN.

FOR CALENDAR YEAR 1918

OR

Fiscal period begun ....., and ended ....., 1918.

PRINT NAMES AND ADDRESSES PLAINLY.

Examined by

Name of estate or trust .....

Name and address of fiduciary .....

Audited by

1. Did you make a return on Form 1041 for 1917 on behalf of the estate or trust named above? .....
2. If so, to what collector's office was it sent (give district or city and State)? .....
3. Enter below all nontaxable income received by (or accrued to) the estate or trust during the year:

Class of Securities.	Principal.	Interest.	Class of Securities.	Principal.	Interest.	Other Income (Give Source).	Amount.
Bonds of First Liberty Loan unconverted	$	$	Obligations of States and Territories, political subdivisions thereof, and the District of Columbia	$	$		$
Other obligations of the U. S. issued before Sept. 24, 1917, and obligations of U. S. possessions			Federal Farm Loan Bonds				

4. State amount of **stock dividends** received by (or accrued to) the estate or trust directly during the year, declared from earnings of domestic or resident corporations accumulated since February 28, 1913, and prior to January 1, 1918:
(a) Accumulated in 1917, $..... (b) Accumulated in 1916, $..... (c) Accumulated since February 28, 1913, and prior to January 1, 1916, $.....
5. Enter in table below **interest on Liberty Bonds** and other obligations of the United States issued since September 1, 1917, received by (or accrued to) the estate or trust during the year, and maximum amount of such obligations (par value) held at any one time from which such interest was derived (see instructions, page 2, under J (b):

1. Class of Obligation.	Holdings of Estate or Trust. 2. Amount of Interest.	3. Maximum Amount of Obligations.	Share of Holdings of Partnerships, Personal Service Corporations, and other Estates and Trusts. 4. Amount of Interest.	5. Maximum Amount of Obligations.	6. Total of Columns 3 and 5.	7. Maximum Exemption.	
(a) First Liberty Loan converted into Second Loan and Second Liberty Loan unconverted (interest received since January 1, 1918)	$	$	$	$	$	$45,000 (See Note.)	In addition an exemption of $5,000 may be claimed as to any one of these classes or may be divided among them.
(b) First and Second Liberty Loans converted into Third Loan and Third Liberty Loan							
(c) First Liberty Loan converted into Fourth Loan						30,000	
(d) Fourth Liberty Loan						30,000	
(e) Other obligations issued since September 1, 1917						0	
(f) Totals	$	$	$	$	$		

Note.—This exemption (maximum $45,000) is limited to one and one-half times the amount of bonds of the Fourth Liberty Loan originally subscribed for and still held. State here amount of bonds of the Fourth Liberty Loan originally subscribed for and still held ..... $.....

6. Enter in the table below **income from partnerships, personal service corporations, and other estates and trusts:**

1. Name of Partnership, Personal Service Corporation, Estate, or Trust. (If Estate or Trust, give also Name of Fiduciary.)	2. Period (Enter 1918 or Date on Which Fiscal Year Ended).	3. Cash Dividends.	4. Stock Dividends.	5. Interest on Tax-Free Bonds (From Estates and Trusts Only).	6. Interest on Liberty Bonds, etc., Issued Since Sept. 1, 1917.	7. Other Income.	8. Total.
		$	$	$	$	$	$
		Include in J (a), page 2	Include in J (a), page 2	Include in E, page 2.	See instructions, page 2, under J (b).	Enter as B, page 2.	
(a) Totals taxable at 1918 rates (see instructions, page 2, under B)		$	$	$		$	x x x x
(b) Totals taxable at 1917 rates (see instructions, page 2, under B)		$	$	x x x x		$	$

(c) Amount of stock dividends (column 4) taxable at 1916 rates, $..... (d) Amount of stock dividends taxable at 1913–15 rates, $.....

DISTRIBUTION OF INCOME.

(See instructions V, page 1.)

7. Enter in the table below the name and address of each beneficiary and show the share of each in the income of the estate or trust (whether received or not), and his share of income, war-profits, and excess-profits taxes paid by the estate or trust to a possession of the United States or to a foreign country.

1. Name and Address of Each Beneficiary. (Designate nonresident aliens.) Note.—State whether return was filed by or for beneficiary, and, if so, in what district.	2. Interest on Tax-Free Bonds Reported in Block E.	3. Cash Dividends.	4. Stock Dividends.	5. Interest on Liberty Bonds, etc., Issued Since September 1, 1917.	6. Other Income.	7. Income, War-Profits, and Excess-Profits Taxes Paid or Accrued to a Possession of the U. S. or to a Foreign Country.
	$	$	$	$	$	$
Totals	$	$	$	$	$	$

FORM OF AFFIDAVIT.

I swear (or affirm) that the foregoing return, to the best of my knowledge and belief, contains a true and complete statement of all taxable gains, profits, and income received by or coming into the custody or control and management of the fiduciary as stated, during the year for which the return is made; that said beneficiaries are entitled, under the Revenue Act of 1918, to all the deductions entered or claimed therein; and that there is contained therein a true and complete list of the names and addresses of all the beneficiaries entitled to share in this income, and the amount of each such beneficiary's share.

Sworn to and subscribed before me this ..... day of ....., 1919.

.....
(Signature of fiduciary or of officer representing fiduciary.)

.....
(Address.)

.....
.....
(Official capacity.)

DETACH RETURN HERE AND SEND IT TO COLLECTOR OF INTERNAL REVENUE

RETURN OF TAXABLE INCOME

A. INCOME FROM BUSINESS.

1. Kind of business..... 2. Business address.....

3. Total sales and income from business..... $.....

COST OF GOODS SOLD:

4. Labor..... $.....
5. Material and supplies.....
6. Merchandise bought for sale.....
7. Other costs (submit schedule of principal items at foot of page or on separate sheet).....
8. Plus inventories at beginning of year.....
9. TOTAL..... $.....
10. Less inventories at end of year.....
11. NET COST OF GOODS SOLD..... $.....

OTHER BUSINESS DEDUCTIONS:

12. Salaries and wages not reported as "Labor" under "Cost of Goods Sold"..... $.....
13. Rent.....
14. Interest on business indebtedness.....
15. Taxes on business and business property.....
16. Repairs, wear and tear, obsolescence, depletion, and property losses (explain in table below).....
17. Bad debts arising from sales.....
18. Other expenses (submit schedule of principal items at foot of page or on separate sheet).....
19. TOTAL OTHER BUSINESS DEDUCTIONS..... $.....

20. NET COST OF GOODS SOLD PLUS OTHER BUSINESS DEDUCTIONS..... $.....

21. NET INCOME FROM BUSINESS..... $.....

B. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND OTHER ESTATES AND TRUSTS (not including interest on tax-free covenant bonds received through other fiduciaries, which should be included in Item E; dividends, which should be included in Item J (a); interest on obligations of the U. S., issued since September 1, 1917, which should be included in Item J (b)) ..... $.....

C. PROFIT FROM SALE OF LAND, BUILDINGS, STOCKS, BONDS, AND OTHER PROPERTY.

1. KIND OF PROPERTY.	2. YEAR ACQUIRED.	3. NAME AND ADDRESS OF PURCHASER OR BROKER.	4. SALE PRICE.	5. ORIGINAL COST OR MARKET VALUE MARCH 1, 1913.	6. COST OF SUBSEQUENT IMPROVEMENTS, IF ANY.	7. DEPRECIATION SUBSEQUENTLY SUSTAINED.
			$.....	$.....	$.....	$.....
NET PROFIT FROM SALES (total of columns 4 and 7 minus total of columns 5 and 6)			$.....	$.....	$.....	$.....

D. INCOME FROM RENTS AND ROYALTIES.

1. KIND OF PROPERTY.	2. NAME AND ADDRESS OF TENANT, LESSEE, ETC.	3. AMOUNT OF RENT AND ROYALTIES.	4. REPAIRS, WEAR AND TEAR, OBSOLESCENCE, DEPLETION, AND PROPERTY LOSSES	5. INTEREST.	6. TAXES.	7. OTHER EXPENSES. (EXPLAIN BELOW).
		$.....	$.....	$.....	$.....	$.....
NET INCOME FROM RENTS AND ROYALTIES (total of column 3 minus total of columns 4, 5, 6, and 7)		$.....	$.....	$.....	$.....	$.....

E. INTEREST ON CORPORATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH A TAX OF 2% WAS PAID BY DEBTOR CORPORATION (including such interest received through other fiduciaries)..... $.....

F. OTHER INCOME (not including dividends, or interest on obligations of the United States).

	1. GROSS INCOME.	2. DEDUCTIONS, IF ANY.
1. Interest on bonds, mortgages, and other obligations of domestic and resident corporations except as reported in Item E	$.....	$.....
2. Interest on bonds of foreign countries and corporations and dividends on stock of foreign corporations		
3. Interest on bank deposits, mortgages, etc.		
4.		
5.		
NET TOTAL (total of column 1 minus total of column 2)	$.....	$.....

G. TOTAL NET INCOME FROM ABOVE SOURCES..... $.....

H. DEDUCTIONS NOT INCLUDED ABOVE.

1. Interest paid or accrued..... $.....
2. Taxes paid or accrued.....
3. Losses by fire, storm, etc. (explain in table below)..... $.....
4. Total contributions (explain below).....
5. Amounts paid or set aside for U. S., any State, etc..... $.....
6. Other deductions, if any (explain below).....

TOTAL..... $.....

I. NET INCOME..... $.....

J (a). **Dividends on stock of corporations organized or doing business in the United States** (not including income from personal service corporations earned since Jan. 1, 1918)

Received directly, $.....; received through partnerships, personal service corporations, and other fiduciaries, $..... TOTAL..... $.....

J (b). **Total amount of interest on bonds and other obligations of the United States issued after September 1, 1917** (see instructions, page 2)..... .....

K. **Total net income.** (If Item I shows minus quantity, deduct excess)..... $.....

ENTER IN THIS TABLE DETAILS CONCERNING REPAIRS, WEAR AND TEAR, PROPERTY LOSSES, ETC., CLAIMED AS DEDUCTIONS IN SCHEDULES A, D, AND H ABOVE.

1. LETTER "A," "D" OR "H."	2. KIND OF PROPERTY (IF BUILDINGS, STATE ALSO MATERIAL OF WHICH CONSTRUCTED).	3. YEAR ACQUIRED.	4. COST OF PROPERTY (OR MARKET VALUE MARCH 1, 1913), EXCLUSIVE OF LAND.	5. REPAIRS (NOT OFFSET BY CLAIMS FOR WEAR AND TEAR AND LOSSES).	WEAR AND TEAR, OBSOLESCENCE, AND DEPLETION CHARGED OFF. 6. RATE.	7. AMOUNT PREVIOUS YEARS.	8. AMOUNT THIS YEAR.	LOSSES NOT COMPENSATED FOR BY INSURANCE. 9. CAUSE OF LOSS.	10. AMOUNT OF LOSS.
			$.....	$.....		$.....	$.....		$.....

EXPLANATION OF DEDUCTIONS claimed in Schedule A, lines 7 and 18; Schedule D, column 7; Schedule F, column 2; and Schedule H, Items 4, 5, and 6.

DETACH THE RETURN (CONTAINING AFFIDAVIT) AND DELIVER OR SEND IT TO COLLECTOR OF INTERNAL REVENUE ON OR BEFORE JUNE 15, 1919

KEEP THIS WORK SHEET AND THE INSTRUCTION SHEET

Page 1 of Work Sheet

Form 1041—UNITED STATES INTERNAL REVENUE SERVICE

WORK SHEET FOR FIDUCIARY INCOME TAX RETURN

FOR CALENDAR YEAR 1918

OR

Fiscal Period Begun ..... and Ended 1918

IF YOU NEED ASSISTANCE GO TO A DEPUTY COLLECTOR OR TO THE COLLECTOR'S OFFICE BUT FIRST READ INSTRUCTIONS AND FILL OUT THIS SHEET (FACE AND BACK) IN PENCIL AS WELL AS YOU CAN

PRINT NAMES AND ADDRESSES PLAINLY

Name of estate or trust .....

Name and address of fiduciary .....

1. Did you make a return on Form 1041 for 1917 on behalf of the estate or trust named above? .....

2. If so, to what collector's office was it sent (give district or city and State)? .....

3. Enter below all nontaxable income received by (or accrued to) the estate or trust during the year:

Class of Securities.	Principal.	Interest.	Class of Securities.	Principal.	Interest.	Other Income (Give Source).	Amount.
Bonds of First Liberty Loan unconverted	$	$	Obligations of States and Territories, political subdivisions thereof, and the District of Columbia	$	$		$
Other obligations of the U. S. issued before Sept. 24, 1917, and obligations of U. S. possessions			Federal Farm Loan Bonds				

4. State amount of **stock dividends** received by (or accrued to) the estate or trust directly during the year, declared from earnings of domestic or resident corporations accumulated since February 28, 1913, and prior to January 1, 1918:
(a) Accumulated in 1917, $..... (b) Accumulated in 1916, $..... (c) Accumulated since February 28, 1913, and prior to January 1, 1916, $.....

5. Enter in table below **interest on Liberty Bonds** and other obligations of the United States issued since September 1, 1917, received by (or accrued to) the estate or trust during the year, and maximum amount of such obligations (par value) held at any one time from which such interest was derived (see instructions, page 2, under J (h):

1. Class of Obligation.	Holdings of Estate or Trust. 2. Amount of Interest.	3. Maximum Amount of Obligations.	Share of Holdings of Partnerships, Personal Service Corporations, and Other Estates and Trusts. 4. Amount of Interest.	5. Maximum Amount of Obligations.	6. Total of Columns 3 and 5.	7. Maximum Exemption.	
(a) First Liberty Loan converted into Second Loan and Second Liberty Loan unconverted (interest received since January 1, 1918)	$	$	$	$	$	$45,000 (See Note.)	In addition an exemption of $5,000 may be claimed as to any one of these classes or may be divided among them.
(b) First and Second Liberty Loans converted into Third Loan and Third Liberty Loan							
(c) First Liberty Loan converted into Fourth Loan						30,000	
(d) Fourth Liberty Loan						30,000	
(e) Other obligations issued since September 1, 1917						0	
(f) Totals	$	$	$	$	$		

Note.—This exemption (maximum $45,000) is limited to one and one-half times the amount of bonds of the Fourth Liberty Loan originally subscribed for and still held. State here amount of bonds of the Fourth Liberty Loan originally subscribed for and still held ..... $.....

6. Enter in the table below **income from partnerships, personal service corporations, and other estates and trusts:**

1. Name of Partnership, Personal Service Corporation, Estate, or Trust. (If Estate or Trust, Give also Name of Fiduciary.)	2. Period (Enter 1918 or Date on Which Fiscal Year Ended).	3. Cash Dividends.	4. Stock Dividends.	5. Interest on Tax-Free Bonds (From Estates and Trusts Only).	6. Interest on Liberty Bonds, etc., Issued Since Sept. 1, 1917.	7. Other Income.	8. Total.
		$	$	$	$	$	$
		Include in J (a), page 2.	Include in J (a), page 2.	Include in E, page 2.	See instructions, page 2, under J (b).	Enter as D, page 2.	
(a) Totals taxable at 1918 rates (see instructions, page 2, under B)		$	$	$		$	x x x x
(b) Totals taxable at 1917 rates (see instructions, page 2, under B)		$	$	x x x x	$	$	$

(c) Amount of stock dividends (column 4) taxable at 1916 rates, $..... (d) Amount of stock dividends taxable at 1913–15 rates, $.....

DISTRIBUTION OF INCOME.

(See Instructions V, page 1.)

7. Enter in the table below the name and address of each beneficiary and show the share of each in the income of the estate or trust (whether received or not), and his share of income, war-profits, and excess-profits taxes paid by the estate or trust to a possession of the United States or to a foreign country.

1. Name and Address of Each Beneficiary. (Designate nonresident aliens.) Note.—State whether return was filed by or for beneficiary, and, if so, in what district.	2. Interest on Tax-Free Bonds Reported in Block E.	3. Cash Dividends.	4. Stock Dividends.	5. Interest on Liberty Bonds, etc., Issued Since September 1, 1917.	6. Other Income	7. Income, War-Profits, and Excess-Profits Taxes Paid or Accrued to a Possession of the U. S. or to a Foreign Country.
	$	$	$	$	$	$
Totals	$	$	$	$	$	$

2—8792

FIDUCIARY'S MEMORANDA

RETAIN THIS SHEET AND INSTRUCTION SHEET AVAILABLE FOR INSPECTION BY REVENUE OFFICER

TAXPAYER'S WORK SHEET FOR FIDUCIARY INCOME TAX RETURN

A. INCOME FROM BUSINESS.

1. Kind of business ..... 2. Business address .....

3. Total sales and income from business ..... $

COST OF GOODS SOLD

4. Labor ..... $
5. Material and supplies .....
6. Merchandise bought for sale .....
7. Other costs (submit schedule of principal items at foot of page or on separate sheet) .....
8. Plus inventories at beginning of year .....
9. Total ..... $
10. Less inventories at end of year .....
11. Net Cost of Goods Sold ..... $

OTHER BUSINESS DEDUCTIONS:

12. Salaries and wages not reported as "Labor" under "Cost of Goods Sold" ..... $
13. Rent .....
14. Interest on business indebtedness .....
15. Taxes on business and business property .....
16. Repairs, wear and tear, obsolescence, depletion, and property losses (explain in table below) .....
17. Bad debts arising from sales .....
18. Other expenses (submit schedule of principal items at foot of page or on separate sheet) .....
19. Total Other Business Deductions ..... $

20. Net Cost of Goods Sold Plus Other Business Deductions ..... $

21. Net Income from Business ..... $

B. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND OTHER ESTATES AND TRUSTS

(not including interest on tax-free covenant bonds received through other fiduciaries, which should be included in item E; dividends, which should be included in Item J (a); interest on obligations of the U. S., issued since September 1, 1917, which should be included in Item J (b)) ..... $

C. PROFIT FROM SALE OF LAND, BUILDINGS, STOCKS, BONDS, AND OTHER PROPERTY.

1. Kind of Property.	2. Year Acquired.	3. Name and Address of Purchaser or Broker.	4. Sale Price.	5. Original Cost or Market Value March 1, 1913.	6. Cost of Subsequent Improvements, if any.	7. Depreciation Subsequently Sustained.
			$	$	$	$
Net Profit from Sales (total of columns 4 and 7 minus total of columns 5 and 6)			$	$	$	$

D. INCOME FROM RENTS AND ROYALTIES.

1. Kind of Property.	2. Name and Address of Tenant, Lessee, Etc.	3. Amount of Rent and Royalties.	4. Repairs, Wear and Tear, Obsolescence, Depletion, and Property Losses	5. Interest.	6. Taxes.	7. Other Expenses. (Explain Below).
		$	$	$	$	$
Net Income from Rents and Royalties (total of column 3 minus total of columns 4, 5, 6, and 7)		$	$	$	$	$

E. INTEREST ON CORPORATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH A TAX OF 2% WAS PAID BY DEBTOR CORPORATION

(including such interest received through other fiduciaries) ..... $

F. OTHER INCOME (not including dividends, or interest on obligations of the United States).

	1. Gross Income.	2. Deductions, if any.
1. Interest on bonds, mortgages, and other obligations of domestic and resident corporations except as reported in Item E	$	$
2. Interest on bonds of foreign countries and corporations and dividends on stock of foreign corporations		
3. Interest on bank deposits, mortgages, etc.		
4.		
5.		
Net Total (total of column 1 minus total of column 2)	$	$

G. TOTAL NET INCOME FROM ABOVE SOURCES ..... $

H. DEDUCTIONS NOT INCLUDED ABOVE.

1. Interest paid or accrued ..... $
2. Taxes paid or accrued .....
3. Losses by fire, storm, etc. (explain in table below) ..... $
4. Total contributions (explain below) .....
5. Amounts paid or set aside for U. S., any State, etc. ..... $
6. Other deductions, if any (explain below) .....

Total ..... $

I. NET INCOME ..... $

J (a). Dividends on stock of corporations organized or doing business in the United States (not including income from personal service corporations earned since Jan. 1, 1918):

Received directly, $.....; received through partnerships, personal service corporations, and other fiduciaries, $..... Total ..... $

J (b). Total amount of interest on bonds and other obligations of the United States issued after September 1, 1917 (see instructions, page 2) .....

K. Total net income. (If Item I shows minus quantity, deduct excess) ..... $

ENTER IN THIS TABLE DETAILS CONCERNING REPAIRS, WEAR AND TEAR, PROPERTY LOSSES, ETC., CLAIMED AS DEDUCTIONS IN SCHEDULES A, D, AND H ABOVE.

1. Refer to "A," "D" or "H."	2. Kind of Property (if Buildings, State also Material of which Constructed).	3. Year Acquired.	4. Cost of Property (or Market Value March 1, 1913), Exclusive of Land.	5. Repairs (not Offset by Claims for Wear and Tear and Losses).	Wear and Tear, Obsolescence, and Depletion Charged off. 6. Rate.	7. Amount Previous Years.	8. Amount this Year.	Losses not Compensated for by Insurance. 9. Cause of Loss.	10. Amount of Loss.
			$	$		$	$		$

EXPLANATION OF DEDUCTIONS claimed in Schedule A, lines 7 and 18; Schedule D, column 7; Schedule F, column 2; and Schedule H, Items 4, 5, and 6.

2—8762

I. RETURNS BY FIDUCIARIES.

1. Returns on Form 1041 for estates and trusts.—Every fiduciary, or at least one of joint fiduciaries, must make a return on this form (Form 1041) for the estate or trust for which he acts, if the income of such estate or trust is distributable periodically, or the tax is payable by the beneficiaries, provided (a) the net income of such estate or trust for the taxable year was $1,000 or over or (b) any beneficiary of such estate or trust is a nonresident alien. If the sole beneficiary of the estate or trust is a nonresident alien Form 1041 may be omitted.

2. Returns on Form 1040 for estates and trusts.—In the case of (a) estates of decedents before final settlement and of (b) trusts, whether created by will or deed, for unascertained persons or persons with contingent interests or income held for future distribution under the terms of the will or trust, the income is taxed to the fiduciary as a single person, except that from the income of a decedent's estate there may first be deducted any amount properly paid or credited to a beneficiary. Under these conditions a fiduciary should make a return for the estate or trust on Form 1040 or 1040A. (See section 200 of the statute and Articles 1521 and 1522 of Regulations 45.) As an intestate's real estate does not pass to his administrator, upon a sale by the heirs, whether before or after the settlement of the estate, each heir is taxed individually on any profit derived.

3. Returns on Form 1040 for beneficiaries.—A return on Form 1040 or 1040A should be rendered by the fiduciary in the case of (a) income distributable to a nonresident alien, (b) an ordinary guardianship of a minor, and (c) an estate of a decedent before final settlement. As to any income properly paid or credited to a beneficiary, the income is taxable directly to the beneficiary. The fiduciary must make a return on Form 1040 or 1040A for each individual whose income is in his charge, if such individual—

(a) Received a net income for the taxable year of $2,000 or over, if married and living with wife or husband;
(b) Received a net income for the taxable year of $1,000 or over, if not married or not living with wife or husband, or
(c) Is a nonresident alien (regardless of the amount of his income).
(d) If part of the income of a trust estate is distributed to beneficiaries and part is retained for the benefit of the trust estate, a return should be made on Form 1041 for the entire income of the trust estate and on Form 1040 for the retained portion of the income.

4. Return for decedent.—If the net income of a decedent from the beginning of the taxable year to the date of his death was $1,000, if unmarried, or $2,000, if married and living with wife or husband, the executor or administrator shall make a return on Form 1040 or 1040A for such decedent.

5. Returns for two trusts.—If two or more trusts, the income of which is taxable to the beneficiaries, were created by the same person and are in charge of the same trustee, the trustee shall make a single return on Form 1041 (revised) for all such trusts, notwithstanding that they may arise from different instruments. If, however, a trustee holds trusts created by different persons for the benefit of the same beneficiary, he shall make a return on Form 1041 (revised) for each trust separately.

6. For definition of a fiduciary and further instructions as to returns and tax liability see Articles 1521 and 1522, 341 to 346, and 421 to 425 of Regulations 45.

II. RECEIPTS EXEMPT FROM TAX.

The following classes of receipts are exempt from income tax, and need not be reported on page 2 of the return. However, nontaxable income of the classes described in paragraphs 1, 3, 4, 5, and 6 should be reported in Table 3, page 1 of the return.

1. Pay not exceeding $3,500, for active services in the military and naval forces of the United States.

2. Gifts (not made as a consideration for service rendered) and money and property acquired under a will or by inheritance (but the income derived from money or property received by gift, will, or inheritance is taxable and must be reported).

3. Interest on bonds and other obligations of the United States issued before September 1, 1917, and on such bonds and other obligations issued since that date, provided the holdings of the estate or trust do not exceed the exemptions allowed by law. (See page 2 of Instructions, Item J (b)).

4. Interest on bonds and other obligations of United States possessions (Philippines, Porto Rico, etc.).

5. Interest on bonds and other obligations of States, territories, political subdivisions thereof (such as cities, counties, and townships), and the District of Columbia.

6. Income from securities issued under the provisions of the Federal Farm Loan Act of July 17, 1916.

7. Dividends upon stock of Federal Reserve Banks. However, dividends paid by member banks are treated like dividends of ordinary corporations.

8. Interest on bonds issued by the War Finance Corporation only if and to the extent provided in the acts authorizing the issue thereof.

9. Proceeds of life insurance policies paid to individual beneficiaries on the death of the insured, or to the estate of the insured.

10. Amounts received by the insured under life insurance, endowment, and annuity contracts, provided such payments do not exceed the premiums paid in. The amount by which the total payments that have been received exceed the total premiums paid in is income and must be reported in Schedule F.

11. Amounts received from accident and health insurance and under workman's compensation acts plus the amount of any damages received by suit or agreement on account of injuries or sickness.

III. FARM INCOME.

If any of the income of the estate or trust is derived from farming, a "Schedule of Farm Income and Expenses" (Form 1040F) should be filled out and filed with this return. The net farm income, as shown by the Schedule, should be included in Item 21 of Schedule A of this return.

IV. PERIOD TO BE COVERED.

The return of a taxpayer is made and his income computed for his taxable year, which means his fiscal year, or the calendar year if he has not established a fiscal year. The term "fiscal year" means an accounting period of twelve months ending on the last day of any month other than December. No fiscal year will, however, be recognized unless before its close it was definitely established as an accounting period by the taxpayer and the books of such taxpayer were kept in accordance therewith. The taxable year 1918 is the calendar year 1918 or any fiscal year ending during the calendar year 1918. See section 200 of the statute. A taxpayer having an existing accounting period which is a fiscal year within the meaning of the statute not only needs no permission to make his return on the basis of such a taxable year, but is required to do so, regardless of the former basis of rendering returns. A person having no such fiscal year must make return on the basis of the calendar year. The first return under the present statute of a taxpayer who has heretofore made return on a basis different from his accounting period will necessarily overlap his next previous return. For the method of adjusting the tax in such a case see section 205 of the statute and articles 1621–1624. Section 226 has no application to this situation. Except in the cases of a return for the taxable year 1918 and of a first return for income tax a taxpayer shall make his return on the basis (fiscal or calendar year) upon which he made his return for the taxable year immediately preceding unless, with the approval of the Commissioner, he has changed the basis of computing his net income.

If a taxpayer changes his accounting period, and not merely his taxable year to conform with his existing accounting period, he shall as soon as possible give to the collector for transmission to the Commissioner written notice of such change and of his reasons therefor. The Commissioner will not approve a change of the basis of computing net income unless such notice is given at a time which is both (a) at least thirty days before the due date of the taxpayer's return on the basis of his existing taxable year and (b) at least thirty days before the due date of his return on the basis of the proposed taxable year. If the change in the basis of computing the net income of the taxpayer is approved by the Commissioner, the taxpayer shall thereafter make his returns upon the basis of the new accounting period in accordance with the requirements of section 226 of the statute and his net income shall be computed as therein provided. See article 431.

V. SEPARATION OF INCOME ASSIGNABLE TO DIFFERENT YEARS.

In showing the distribution of income among beneficiaries in Table 7, enter separately the share of each beneficiary in income assignable to 1913–1915, 1916, 1917, and 1918 (all other income).

VI. TIME AND PLACE FOR FILING.

The return for the taxable year 1918 must be sent to the collector of internal revenue for the district in which the fiduciary resides or has his principal place of business so as to reach the collector's office on or before June 15, 1919, an extension of time having been granted. If the fiduciary has no legal residence or principal place of business in the United States the return should be forwarded to the Collector of Internal Revenue, Baltimore, Md. (See Articles 441 to 445, Regulations 45.)

VII. AFFIDAVIT.

1. The affidavit must be executed by the individual or organization receiving, or having custody or control and management of, the income of the estate or trust. If two or more individuals act jointly as a fiduciary, the affidavit may be executed by any one of them.

2. The oath will be administered without charge by any collector or deputy collector of internal revenue. If an internal revenue officer is not available, the return should be sworn to before a notary public, justice of the peace, or other person authorized to administer oaths.

3. It is not necessary to show the statement of net income to the officer who administers the oath.

VIII. PENALTY FOR FAILING TO MAKE REPORT ON TIME.

A penalty of not more than $1,000 attaches for failure to file the return within the time required by law. If the failure is willful or an attempt is made to defeat or evade the tax, the penalty is $10,000 or imprisonment for not more than one year, or both, together with cost of prosecution.

IX. WITHHOLDING AND INFORMATION AT THE SOURCE.

If the fiduciary has the control, receipt, custody, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income (other than income received as dividends from a corporation whose income is subject to income tax) of any nonresident alien individual, he is required to deduct and withhold income tax at the rate of 8 per cent from such income paid on and after February 25, 1919, and make return thereof on Form 1042, accompanied by Form 1098. Income tax in such cases was required to be withheld at the rate of 2 per cent during the year 1918 and up to February 24, 1919. The fiduciary in executing Form 1040 for a nonresident alien should take credit thereon for any tax so withheld. Every fiduciary who, during 1918, paid to any person salary, wages, commissions, rentals, etc., of $1,000 or more is required to make a true and accurate return to the Commissioner of Internal Revenue showing the nature and source of such payments and the name and address of the person receiving them. Forms 1096 and 1099, for reporting such information, will be furnished by any collector of internal revenue.

In addition to the above the fiduciary is required to execute Form 1099 showing distributive share of each beneficiary's income as reported on Form 1041, and attach them to the return when forwarding it to the collector.

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INSTRUCTIONS FOR FILLING IN TAXABLE INCOME

If the form has not space enough for all entries, make additional entries on a separate sheet of paper and attach it securely to the return

A. INCOME FROM BUSINESS.

Income to be entered in Schedule A.—Report here income from—

(*a*) Sale of merchandise, or of products of manufacturing, construction, mining, and agriculture. (For farm income see Instruction III on the other side of this sheet.)

(*b*) Business service, such as transportation, storage, laundering, hotel and restaurant service, livery and garage service, etc.

In general, report in Schedule A any income in the earning of which expenses for labor, rent, etc., were incurred. Do not report here partnership profits or profits of personal service corporations, which should be entered under B, or dividends from other corporations, which should be entered under J.

If the estate or trust derives income from farming, enter on line 21 the net income from farming, as shown by the "Schedule of Farm Income and Expenses" (Form 1040F).

Income received from sale of lands, buildings, equipment, stocks, bonds, and other property not dealt in as a business should be reported under C.

If a complete profit and loss statement is made, showing all the information called for under "Cost of goods sold" and "Other business deductions," attach it to the return and enter the amount of net income on line 21, Schedule A.

Kind of business.—State kind of goods dealt in or kind of services rendered, and whether manufacturer, jobber, wholesaler, retailer, importer, broker, etc.

Total sales and income from business or profession.—Report the total amount derived from sales or from services, less any discounts or allowances from the sale price or service charge.

Inventories.—If inventories were taken at cost, write "C" on line 8, immediately before the amount column; if at cost or market, whichever is lower, write "C or M."

Other business deductions.—Do not include cost of business equipment or furniture, expenditures for permanent improvements to property, or living and family expenses of any beneficiary.

Rent.—Report here rent for business property (not including rent for dwelling occupied by any beneficiary).

Interest.—Report here interest on business indebtedness, including indebtedness incurred to purchase or carry business property. Do not include interest on indebtedness incurred for the purchase of bonds and other obligations, the interest on which is exempt from tax, except interest on indebtedness incurred to purchase or carry obligations of the United States. See Instruction II, page 1, for a list of obligations the interest on which is exempt.

Taxes.—Report here only taxes on business property or for carrying on business. Do not include taxes assessed against local benefits of a kind tending to increase the value of the property assessed, as for paving, sewers, etc., nor Federal income taxes. State inheritance taxes and Federal estate taxes are not deductible.

Repairs, wear and tear, obsolescence, and property losses.—Report here (*a*) ordinary repairs required to keep property in usable condition; (*b*) depreciation during the year (including a reasonable deduction for obsolescence) if the terms of the will or trust or the decree of a court of competent jurisdiction or the general law require the corpus of the estate to be kept intact, and physical property forming a part of the corpus of such estate is subject to depreciation through its employment in business, provided the amount of the deduction is applied or held by the fiduciary for making good such depreciation; (*c*) losses of business property by fire, storm, or other casualty, or theft, not compensated for by insurance or otherwise and not made good by repairs or replacements claimed as deductions. Explain these deductions in table at foot of page 2 of return. Also set forth the provision of the law, trust, or decree requiring a depreciation deduction and show that the amount deducted has been or will be prescrved and applied to making good the depreciation.

The amount claimed for wear and tear or depreciation should not exceed the original cost of the property (or its value March 1, 1913, if acquired before that date) divided by its total estimated life in years. When the amount of depreciation allowed equals the cost of the property (or its value March 1, 1913), no further claim should be made.

Do not claim any deduction for depreciation in the value of a building occupied by any beneficiary as his dwelling, or of other property held for personal use. Do not claim any deduction for depreciation of real estate (exclusive of improvements thereon), nor for depreciation of stocks, bonds, and other securities, unless the estate is a recognized dealer in securities.

Do not claim depreciation or losses of articles that have been taken into your inventory at a figure reflecting the reduction in value.

Depreciation of patents, copyrights, etc., and depletion of mines, etc.—If you wish to claim a deduction on account of depreciation in the value of patents, copyrights, franchises, and other legal privileges, or on account of depletion of mines and oil and gas wells, see Regulations 45, Articles 163, 163, and 201 to 223.

Bad debts.—Report only debts which you have ascertained to be worthless and have charged off during the year.

A bad debt offsetting income accrued since March 1, 1913, will not be allowed as a deduction unless the amount was reflected in the income reported for the year in which the debt was created. In the case of debts existing prior to March 1, 1913, only their value on that date may be deducted upon subsequently ascertaining them to be worthless.

State under "Explanation of deductions," at the foot of the page, how the debts were ascertained to be worthless, or if the deduction is based on a reserve, state specifically the basis on which such reserve has been computed. Insolvency of the debtor, inability to collect by legal proceedings, or inability of debtor to pay, ascertained by a mercantile agency, would be a sufficient indication of worthlessness.

If at any future time a debt charged off as worthless and allowed as a deduction is collected, the amount collected must be returned as income.

Unpaid debts are not deductible if made good by recovery of property sold or retention of property pledged.

Bad debts arising out of loans not connected with business should be reported in Schedule H.

Other expenses.—Do not include personal exemption here. This is to be reported as Item 26 on Form 1040 or as Item N on Form 1040A. Expenses of administration of an estate, such as court costs, attorney's fees, executor's commissions, etc., are chargeable against the corpus of the estate and are not deductible. Expenses of management of a trust estate are deductible.

Net loss.—If the net cost of goods sold plus other business deductions is in excess of the total amount of sales and income from business, report the difference as a loss by using red ink or a minus sign.

B. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND OTHER ESTATES AND TRUSTS.

Report the share of the estate or trust (whether distributed or not) in the profits of a partnership or personal service corporation or in the income of an estate or trust (if placed to the credit of the estate or trust for which this return is made), not including the part of such share that consisted of dividends on stock of ordinary corporations (to be included in Item J (*a*)), interest on obligations of the United States (to be included in Item J (*b*)), or (in the case of estates and trusts) interest on corporation bonds containing a tax-free covenant, upon which a tax of 2 per cent was paid (or will be paid) by the debtor corporation (to be included in Item E).

If income was received from a partnership, a personal service corporation, or another fiduciary, enter such income in Table 6, page 1, apportioning the income between 1917 and 1918, when necessary as shown on the partnership return.

C. PROFIT FROM SALE OF LAND, BUILDINGS, STOCKS, BONDS, AND OTHER PROPERTY.

Use this schedule for all sales of real estate, and for sales of other property that was not dealt in as a business.

If the profits or losses on sales made through any one broker aggregated $1,000 or more, report the transactions on a separate line with the name and address of the broker.

Kind of property.—Describe the property as definitely as you can in a word or two, as "farm," "house," "lot," "stocks," "bonds."

Sale price.—State the actual consideration or price, or, in case of an exchange, the fair market value of the property received.

Cost.—Enter the original cost of the property or, if it was acquired before March 1, 1913, its fair market value on that date. Expenses incidental to the purchase may be included in the cost if never claimed in income-tax returns as deductions from income. Enter in column 7 the amount of wear and tear, obsolescence, or depletion sustained since March 1, 1913 (or since date of acquisition if subsequent to March 1, 1913). (This is a deduction from cost, though treated for convenience as an addition to the sale price.)

Losses.—If the total of columns 5 and 6 is in excess of the total of columns 4 and 7, report the difference as a loss by using red ink or a minus sign.

D. INCOME FROM RENTS AND ROYALTIES.

Kind of property.—Describe briefly, as in C.

Amount of rent.—Rents received in crop shares shall be returned as of the year in which the crop shares are reduced to money or a money equivalent.

Repairs, wear and tear, obsolescence, depletion, and property losses.—See instructions for Schedule A, above. Explain in table at foot of page 2 of the return.

Other expenses and losses.—Report taxes on rented or leased property and interest on indebtedness incurred or continued to purchase or carry it. Do not include taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

E. INTEREST ON CORPORATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH TAX OF 2% WAS PAID BY DEBTOR CORPORATION.

This item should include all interest received directly or through other fiduciaries on bonds of corporations organized or doing business in the United States, containing a clause by which the debtor corporation agrees to pay the interest without any deduction for taxes, provided exemption from withholding was not claimed by the owner of the bonds. If exemption was claimed, the interest received must be reported in F.

F. OTHER INCOME (NOT INCLUDING DIVIDENDS, OR INTEREST ON OBLIGATIONS OF THE UNITED STATES).

Report in this schedule interest on bank deposits, notes, mortgages, etc., and all other income not reported in Schedules A to E, except (*a*) dividends from corporations organized or doing business in the United States, which should be reported as Item J (*a*); (*b*) taxable interest on obligations of the United States, which should be reported as Item J (*b*); (*c*) receipts exempt from tax, as stated in Instruction II on the other side of this sheet.

State separately income from each source.

If any interest on bonds of foreign countries or corporations, or any dividends on stock of foreign corporations were received, submit with the return a schedule showing (*a*) name of country; (*b*) kind of obligations (whether national, state, or municipal obligations, or bonds or stocks of corporations); (*c*) amount of principal; and (*d*) amount of interest or dividends.

Deductions.—Explain deductions in the space at the foot of page 2 of the return.

H. GENERAL DEDUCTIONS NOT INCLUDED ABOVE.

Interest, taxes, losses.—See instructions for Schedule A, under the same.

Contributions.—Report here any part of the gross income which, pursuant to the terms of the will or deed creating the trust, was during the taxable year paid to or permanently set aside for the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, or any corporation organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

Enter under "Explanation of Deductions" at the foot of page 2 of the return, the name and address of each organization falling within the classes named above and the amount paid to each.

Other deductions.—Bad debts arising out of loans not connected with business may be reported here. (See instructions for Schedule A, above.)

J. (a) DIVIDENDS.

Stock dividends which were paid out of profits or surplus accumulated by the distributing corporation prior to the year for which this return is made but not prior to March 1, 1913, should not be included in Item J (*a*), but should be reported as Item 4, *a*, *b*, and *c*, Item 6 (*b*), col. 4, and Items 6 (*c*) and 6 (*d*) on page 1 of the return.

Profits of personal service corporations should be included in B (except such part thereof as consisted of dividends of ordinary corporations and interest on obligations of the United States issued since September 1, 1917).

J. (b) INTEREST ON OBLIGATIONS OF THE UNITED STATES ISSUED SINCE SEPTEMBER 1, 1917.

1. In order to ascertain the amount to be entered under J (*b*), refer first to Table 5 on page 1 of the return.

2. If any amount entered in column 6 of that table exceeds the maximum exemption for the same class of obligations (stated in column 7), then you must attach to the return a schedule showing in separate columns the following information for that class of obligations:

(*a*) Periods during which your holdings of that class of obligations remained unchanged (including your share of the holdings of partnerships, personal service corporations, estates, and trusts, and also any holdings the interest on which you reported as income for 1917, and on which you claimed exemption in your 1917 return).

(*b*) Amount of obligations held by you individually during each such period.

(*c*) Your share of the holdings of each partnership, personal service corporation, estate, and trust during each such period.

(*d*) Totals of amounts in columns *b* and *c*.

(*e*) Amount by which each amount entered in column *d* exceeds the maximum exemption for that class of obligations.

(*f*) Interest derived from each amount of principal stated in column *e*.

3. If any part of the interest reported in Table 5 was received through a partnership having a fiscal year falling partly in the calendar year 1917, the taxable interest received through such partnership should be calculated in a separate column *g* of the schedule. Enter in this column, for each period specified in column *a*, either (1) the amount entered in column *f* or (2) the interest on your share of the partnership's holdings (shown in column *c*), whichever is the smaller.

4. Enter as Item J (*b*), on page 2 of the return, the total of column *f* for all classes of obligations, less as many twelfths of the total of column *g* (if any) as the number of months of the partnership's fiscal year that fell in 1917. Enter the amount deducted as Item 6 (*b*) (column 6) on page 1 of the return.

2—6792

Form 1116—United States Internal Revenue Service.

CLAIM FOR CREDIT ON INDIVIDUAL INCOME TAX RETURN FOR TAXES PAID OR ACCRUED TO FOREIGN COUNTRIES OR TO POSSESSIONS OF THE UNITED STATES

Name of Claimant..... Address .....
(Street and number or rural route.)

.....
(City or town.) (State.)

On behalf of the above-named claimant, who is a citizen or subject of ....., and is a resident
(Name of country.)
of ....., credit is hereby claimed, on his attached income-tax return, which is based on income
(Name of country.)
.....[1] during the taxable year ....., for taxes paid or accrued[1] as follows:
(Received or accrued.) (If calendar year give year—if fiscal year give months.)

SCHEDULE A1.

[2] Tax Paid or Accrued[1] to a Possession of the United States on Behalf of Claimant Individually.

Name of possession of U. S. ..... Character of tax .....
(Income, war-profits, or excess-profits.)

Statute imposing tax .....
(To be named fully and clearly so as to be easily identified.)

Date of accrual ..... Date of payment (if paid) .....
(To be given even if claim is based on payment.) (To be given even if claim is based on accrual.)

1. Amount of tax[3] (evidenced by attached receipt or return) .....[4], which (converted at an exchange
(In foreign money.)
rate of .....[5]) equals in dollars ..... $.....

SCHEDULE A2.

[2] Tax Paid or Accrued[1] to a Possession of the United States on Behalf of Claimant Individually.

Name of possession of U. S. ..... Character of tax .....
(Income, war-profits, or excess-profits.)

Statute imposing tax .....
(To be named fully and clearly so as to be easily identified.)

Date of accrual ..... Date of payment (if paid) .....
(To be given even if claim is based on payment.) (To be given even if claim is based on accrual.)

1. Amount of tax[3] (evidenced by attached receipt or return) .....[4], which (converted at an exchange
(In foreign money.)
rate of .....[5]) equals in dollars ..... $.....

SCHEDULE B1.

[6] Tax Paid or Accrued[1] to a Foreign Country on Behalf of Claimant Individually.

Name of foreign country ..... Character of tax .....
(Income, war-profits, or excess-profits.)

Statute imposing tax .....
(To be named fully and clearly so as to be easily identified.)

Date of accrual ..... Date of payment (if paid) .....
(To be given even if claim is based on payment.) (To be given even if claim is based on accrual.)

1. Total net income on which this tax was based ....[4]

2. That amount of such total net income which was derived from sources in that foreign country[7] ....[4]
3. Ratio of total net income derived from sources in that foreign country to total net income on which this tax was based (item 2 divided by item 1) ....

4. Total amount of this tax[3] payment or accrual to that foreign country (evidenced by attached receipt or return) ....[4]
5. That amount of this tax which was based on income derived from sources in that foreign country (item 3 multi-
plied by item 4) .....[4], which (converted at an exchange rate of .....[5]) equals in dollars.. $.....
(In foreign money.)

SCHEDULE B2.

[6] Tax Paid or Accrued[1] to a Foreign Country on Behalf of Claimant Individually.

Name of foreign country ..... Character of tax .....
(Income, war-profits, or excess-profits.)

Statute imposing tax .....
(To be named fully and clearly so as to be easily identified.)

Date of accrual ..... Date of payment (if paid) .....
(To be given even if claim is based on payment.) (To be given even if claim is based on accrual.)

1. Total net income on which this tax was based ....[4]

2. That amount of such total net income which was derived from sources in that foreign country[7] ....[4]
3. Ratio of total net income derived from sources in that foreign country to total net income on which this tax was based (item 2 divided by item 1) ....

4. Total amount of this tax[3] payment or accrual to that foreign country (evidenced by attached receipt or return) ....[4]
5. That amount of this tax which was based on income derived from sources in that foreign country (item 3 multi-
plied by item 4) .....[4], which (converted at an exchange rate of .....[5]) equals in dollars.. $.....
(In foreign money.)

[1] See note 1, page 3. [2] See note 2, page 3. [3] See note 3, page 3. [4] See note 4, page 3. [5] See note 5, page 3. [6] See note 6, page 3. [7] See note 7, page 3.

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SCHEDULE C1.

[2] Tax Paid or Accrued [1] to a Possession of the United States on Behalf of a Partnership, Estate, or Trust, in Which Claimant Has an Interest.

Partnership, estate, or trust ..... (Name.) ..... (Address.)

Fiduciary (if estate or trust) ..... (Name.) ..... (Address.)

Character and extent of claimant's interest in partnership, estate, or trust .....

.....

Name of possession of U. S. ..... Character of tax ..... (Income, war-profits, or excess-profits.)

Statute imposing tax ..... (To be named fully and clearly so as to be easily identified.)

Date of accrual ..... (To be given even if claim is based on payment.) Date of payment (if paid) ..... (To be given even if claim is based on accrual.)

1. Total net income on which this tax was based ..... [4]
2. That amount of such total net income to which claimant would have been entitled as partner or beneficiary had no such tax of the partnership, estate, or trust accrued or been paid to that possession (claimant's share of item 1) ..... [4]
3. Ratio of that amount of total net income to which claimant would have been entitled, to total net income on which this tax was based (item 2 divided by item 1) .....
4. Total amount of this tax [3] payment or accrual to that possession (evidenced by attached receipt or return) ..... [4]
5. That amount of this tax which was based on claimant's share of the income taxed (item 3 multiplied by item 4) ..... [4], which (converted at an exchange rate of ..... [5]) equals in dollars ..... $.....
(In foreign money.)

SCHEDULE C2.

[2] Tax Paid or Accrued [1] to a Possession of the United States on Behalf of a Partnership, Estate, or Trust, in Which Claimant Has an Interest.

Partnership, estate, or trust ..... (Name.) ..... (Address.)

Fiduciary, (if estate or trust) ..... (Name.) ..... (Address.)

Character and extent of claimant's interest in partnership, estate, or trust .....

.....

Name of possession of U. S. ..... Character of tax ..... (Income, war-profits, or excess-profits.)

Statute imposing tax ..... (To be named fully and clearly so as to be easily identified.)

Date of accrual ..... (To be given even if claim is based on payment.) Date of payment (if paid) ..... (To be given even if claim is based on accrual.)

1. Total net income on which this tax was based ..... [4]
2. That amount of such total net income to which claimant would have been entitled as partner or beneficiary had no such tax of the partnership, estate, or trust accrued or been paid to that possession (claimant's share of item 1) ..... [4]
3. Ratio of that amount of total net income to which claimant would have been entitled, to total net income on which this tax was based (item 2 divided by item 1) .....
4. Total amount of this tax [3] payment or accrual to that possession (evidenced by attached receipt or return) ..... [4]
5. That amount of this tax which was based on claimant's share of the income taxed (item 3 multiplied by item 4) ..... [4], which (converted at an exchange rate of ..... [5]) equals in dollars ..... $.....
(In foreign money.)

SCHEDULE D1.

[6] Tax Paid or Accrued [1] to a Foreign Country on Behalf of a Partnership, Estate, or Trust in Which Claimant Has an Interest.

Partnership, estate, or trust ..... (Name.) ..... (Address.)

Fiduciary (if estate or trust) ..... (Name.) ..... (Address.)

Character and extent of claimant's interest in partnership, estate, or trust .....

.....

Name of foreign country ..... Character of tax ..... (Income, war-profits, or excess-profits.)

Statute imposing tax ..... (To be named fully and clearly so as to be easily identified.)

Date of accrual ..... (To be given even if claim is based on payment.) Date of payment (if paid) ..... (To be given even if claim is based on accrual.)

1. Total net income on which this tax was based ..... [4]
2. That amount of such total net income which was derived from sources in that foreign country [7] ..... [4]
3. Ratio of total net income from sources in that foreign country to total net income on which this tax was based (item 2 divided by item 1) .....
4. Total amount of this tax [3] payment or accrual to that foreign country (evidenced by attached receipt or return) ..... [4]
5. That amount of this tax which was based on income derived from sources in that foreign country (item 3 multiplied by item 4.) ..... [4]
6. That amount of such total net income derived from sources in that foreign country to which claimant would have been entitled as partner or beneficiary had no such tax accrued or been paid to that foreign country (claimant's share of item 2) ..... [4]
7. Ratio of that amount of such total net income derived from sources in that foreign country to which claimant would have been entitled, to such total net income derived from sources in that foreign country (item 6 divided by item 2) .....
8. That amount of this tax which was based on claimant's share of income derived from sources in that foreign country (item 5 multiplied by item 7) ..... [4], which (converted at an exchange rate of ..... [5]) equals in dollars ..... $.....
(In foreign money.)

[1] See note 1, page 3. [2] See note 2, page 3. [3] See note 3, page 3. [4] See note 4, page 3. [5] See note 5, page 3. [6] See note 6, page 3. [7] See note 7, page 3.

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SCHEDULE D2.

Tax Paid or Accrued[1] to a Foreign Country on Behalf of a Partnership, Estate, or Trust in Which Claimant Has an Interest.

Partnership, estate, or trust ..... (Name.) ..... (Address.)

Fiduciary (if estate or trust) ..... (Name.) ..... (Address.)

Character and extent of claimant's interest in partnership, estate, or trust .....

.....

Name of foreign country ..... Character of tax ..... (Income, war-profits, or excess-profits.)

Statute imposing tax ..... (To be named fully and clearly so as to be easily identified.)

Date of accrual ..... (To be given even if claim is based on payment.) Date of payment (if paid) ..... (To be given even if claim is based on accrual.)

1. Total net income on which this tax was based ..... [4]
2. That amount of such total net income which was derived from sources in that foreign country[7] ..... [4]
3. Ratio of total net income from sources in that foreign country to total net income on which this tax was based (item 2 divided by item 1) .....
4. Total amount of this tax[3] payment or accrual to that foreign country (evidenced by attached receipt or return) ..... [4]
5. That amount of this tax which was based on income derived from sources in that foreign country (item 3 multiplied by item 4) ..... [4]
6. That amount of such total net income derived from sources in that foreign country to which claimant would have been entitled as partner or beneficiary had no such tax accrued or been paid to that foreign country (claimant's share of item 2) ..... [4]
7. Ratio of that amount of such total net income derived from sources in that foreign country to which claimant would have been entitled, to such total net income derived from sources in that foreign country (item 6 divided by item 2) .....
8. That amount of this tax which was based on claimant's share of income derived from sources in that foreign country (item 5 multiplied by item 7) .....[4], which (converted at an exchange rate of ..... (In foreign money.) [5]) equals in dollars ..... $.....

SUMMARY OF CREDITS CLAIMED

For Taxes Paid or Accrued[1] on Behalf of Claimant Individually.

To possessions of the U. S.: Item 1 of Schedule A1, $.....; Item 1 of Schedule A2, $.....; Total, $.....

To foreign countries: Item 5 of Schedule B1, $.....; Item 5 of Schedule B2, $.....; Total, $.....

For Taxes Paid or Accrued[1] on Behalf of Partnership, Estate, or Trust in Which Claimant Has an Interest.

To possessions of the U. S.: Item 5 of Schedule C1, $.....; Item 5 of Schedule C2, $.....; Total, $.....

To foreign countries: Item 8 of Schedule D1, $.....; Item 8 of Schedule D2, $.....; Total, $.....

Total credit claimed (to be inserted in the attached income-tax return on Form 1040 as item 40) ..... $.....

I swear (or affirm) that the above is to the best of my knowledge and belief a true and complete statement of facts in connection with the credit for income, war-profits, and excess-profits taxes above claimed.

.....
(If claim is made by agent, the reason therefor must be stated on this line.)

Sworn to (or affirmed) and subscribed before me this ..... day of

....., 19.....

..... (Signature of individual or agent.)

..... (Address of individual or agent.)

..... (Official capacity.)

[1] If attached income-tax return is based on income "received," then "paid or accrued" wherever it appears in this form means "paid," if based on income "accrued," then "paid or accrued" means "accrued." (See Section 200 of the Revenue Act of 1918.)

[2] To secure credit for taxes paid or accrued to possessions of the United States, claimant must be a citizen or resident of the United States. (See Section 222 (*a*) on next page.)

[3] "Amount of tax" means tax proper, *excluding* any amount that represents interest or penalties. (See Article 382 on next page.) If the tax has been actually paid in full, the amount of the tax (excluding interest and penalties) so paid is the amount to be entered in this blank, even though the claim be based on the accrual of the tax.

[4] State this item in terms of the currency used in making the return on which this tax was based (e. g., pounds, francs, marks).

[5] Claimant must here state the rate of exchange used and must also attach a statement describing in reasonable detail why and how he determined upon this particular rate.

[6] To secure credit for taxes paid or accrued to a foreign country, claimant must be a citizen or resident of the United States. Moreover, if he is an *alien* resident, he must be a citizen or subject of such foreign country, and such foreign country must allow "a similar credit to citizens of the United States residing in such country." (See Section 222 (*a*) on next page.)

[7] The person making this claim must attach to it a statement describing in reasonable detail the method by which he determined the amount of item 2 ("That amount of such total net income which was derived from sources in that foreign country").

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(OVER)

PROVISIONS OF STATUTE AND REGULATIONS GOVERNING USE OF THIS FORM

SECTION 222 OF REVENUE ACT OF 1918.

SEC. 222. (*a*) That the tax computed under Part II of this title shall be credited with:

(1) In the case of a citizen of the United States, the amount of any income, war-profits, and excess-profit taxes paid during the taxable year to any foreign country, upon income derived from sources therein, or to any possession of the United States; and

(2) In the case of a resident of the United States, the amount of any such taxes paid during the taxable year to any possession of the United States; and

(3) In the case of an alien resident of the United States who is a citizen or subject of a foreign country, the amount of any such taxes paid during the taxable year to such country, upon income derived from sources therein, if such country, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; and

(4) In the case of any such individual who is a member of a partnership or a beneficiary of an estate or trust, his proportionate share of such taxes of the partnership or the estate or trust paid during the taxable year to a foreign country or to any possession of the United States, as the case may be.

(*b*) If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Commissioner, who shall redetermine the amount of the tax due under Part II of this title for the year or years affected, and the amount of tax due upon such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 252. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the taxpayer to give a bond with sureties satisfactory to and to be approved by the Commissioner in such penal sum as the Commissioner may require, conditioned for the payment by the taxpayer of any amount of tax found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require.

(*c*) These credits shall be allowed only if the taxpayer furnishes evidence satisfactory to the Commissioner showing the amount of income derived from sources within such foreign country or such possession of the United States, and all other information necessary for the computation of such credits.

ARTICLES 382 AND 383 OF REGULATIONS 45.

ART. 382. **Meaning of terms.**—"Amount of * * * taxes paid during the taxable year" means taxes proper (no credit being given for amounts representing interest or penalties) paid or accrued during the taxable year on behalf of the individual claiming credit. "Foreign country" includes within its meaning any foreign sovereign state or self-governing colony (for example, the Dominion of Canada), but does not include a foreign municipality (for example, Montreal) unless itself a sovereign State (for example, Hamburg). "Any possession of the United States" includes, among others, Porto Rico, the Philippines and the Virgin Islands. As to the meaning of "sources" see articles 91-93. See also section 1 of the statute.

ART. 383. **Conditions of Allowance of Credit.**—(*a*) When credit is sought for income, war-profits, or excess-profits taxes paid other than to the United States, the income-tax return of the individual must be accompanied by this form, carefully filled out with all the information called for and with the calculations of credits indicated, and duly signed and sworn to or affirmed. When credit is sought for taxes already paid the form must have attached to it the receipt for each such tax payment. When credit is sought for taxes accrued the form must have attached to it the return on which each such accrued tax was based. This receipt or return so attached must be either the original, a duplicate original, a duly certified or authenticated copy, or a sworn copy. In case only a sworn copy of a receipt or return is attached, there must be kept readily available for comparison on request the original, a duplicate original, or a duly certified or authenticated copy. (*b*) In the case of a credit sought for a tax accrued but not paid, the Commissioner may require, as a condition precedent to the allowance of credit, a bond from the taxpayer in addition to this form. If such a bond is required, Form 1117 shall be used for it. It shall be in such penal sum as the Commissioner may prescribe, and shall be conditioned for the payment by the taxpayer of any amount of tax found due upon any redetermination of the tax made necessary by such credit proving incorrect, with such further conditions as the Commissioner may require. This bond shall be executed by the taxpayer, his agent or representative, as principal, and by sureties satisfactory to and approved by the Commissioner. See also section 1320 of the statute.

82—8509

DELIVER OR SEND THIS RETURN SO AS TO REACH COLLECTOR OF INTERNAL REVENUE ON OR BEFORE THE 15TH DAY OF THE THIRD MONTH AFTER THE CLOSE OF THE PERIOD

IF EXTENSION OF TIME FOR FILING RETURN HAS BEEN GRANTED THE AUTHORIZATION MUST BE ATTACHED TO THIS RETURN.

Page 1—Summary

Form 1120-A—UNITED STATES INTERNAL REVENUE SERVICE

CORPORATION INCOME AND PROFITS TAX RETURN

FOR

Fiscal Period begun ....., and ended ....., 1919

If the payment made on submission of Form 1031T was less than one-fourth of the tax (Item 29), the balance of such one-fourth with interest at the rate of 5 per cent per annum from the date the return was due must be remitted herewith.

(Print plainly corporation's name and principal place of business)

Examined by

Audited by

(DO NOT WRITE IN THIS SPACE)

PAYMENT

CASH $.....

CHECK $.....

M. O. $.....

CERT. OF IND. $.....

(Cashier's Stamp)

SCHEDULE I—NET INCOME.

Item.	1911	1912	1913
1. Net Income for Each Prewar Year (as finally determined on income return)	$	$	$
2. Plus amount of corporation excise or income tax paid in each year			
3. Totals for 1911, 1912, and 1913 (If in any of these years there was a loss, enter zero for that year.)	$	$	$
4. Less dividends received in 1913			
5. Net Total for 1913			$
6. Average Net Income for Prewar Period (sum of items on line 3 for 1911 and 1912 and Item 5 for 1913, divided by number of years)			$
7. Net Income for Taxable Year (Item 27, Schedule A, page 2)			$

SCHEDULE II—INVESTED CAPITAL.

Item.	1911	1912	1913	Taxable Year.
1. Capital, surplus, and undivided profits at close of the preceding year as shown by corporation's books before any adjustments are made therein (from Schedule L)	$	$	$	$
2. Plus adjustments by way of additions (from Schedule F)				
3. Total	$	$	$	$
4. Less adjustments by way of deductions (from Schedule G)				
5. Remainder	$	$	$	$
6. Plus or minus changes in invested capital during year (from Schedules J and H)				
7. Total (or Remainder)	$	$	$	$
8. Less deduction on account of inadmissible assets (from Schedule L)				
9. Invested Capital for Each Year	$	$	$	$
10. Average Invested Capital for Prewar Period (sum of items on line 9 for 1911, 1912, and 1913, divided by number of years)				
11. Increase or Decrease in Invested Capital for Taxable Year as Compared with Average Prewar Invested Capital (indicate decrease by "D")				$

SCHEDULE III—EXCESS-PROFITS AND WAR-PROFITS CREDITS.

(If this return is made for a period less than a full year, Items 3 and 8 must be reduced as provided in paragraph 1, page 1 of Instructions.)

Excess-profits credit.		War-profits credit.	
1. Eight per cent of invested capital for taxable year (Item 9, last column, Schedule II)	$	4. Average net income for prewar period (Item 6, Schedule I)	$
2. Exemption, except for foreign corporations ($3,000)		5. Plus 10% of increase or minus 10% of decrease shown by Item 11, Schedule II	
3. Excess-Profits Credit (Item 1 plus Item 2)	$	6. (a) Total of (or Difference Between) Items 4 and 5, or (b) 10% of invested capital for taxable year (Item 9, last column, Schedule II), whichever is larger	$
		7. Exemption, except for foreign corporations ($3,000)	
		8. War-Profits Credit (Item 6 plus Item 7)	$

SCHEDULE IV—COMPUTATION OF TAXES.

WAR-PROFITS AND EXCESS-PROFITS TAX (Brackets one and two).

(If this return is for a period less than a full year the invested capital must be reduced as provided in paragraph 1, page 1 of Instructions.)

1. Brackets.	2. Amount of Net Income (Item 7, Schedule I) for Each Bracket.	3. Excess-Profits Credit (Item 3, Schedule III).	4. Remainder Subject to Tax.	1919 Rates. 5. Rate	6. Amount of Tax.	1918 Rates. 7. Rate.	8. Amount of Tax.
1. Not over 20% of invested capital	$	$	$	20%	$	30%	$
2. Over 20% of invested capital				40%		65%	
3. Totals	$	$	$		$		$

WAR-PROFITS AND EXCESS-PROFITS TAX (Bracket three, also computations under other provisions than Section 301 (a) and (b)).

4. Net income for taxable year (Item 7, Schedule I)	$	7. Eighty per cent of Item 6	$
5. Less amount of war-profits credit (Item 8, Schedule III)		8. Less Item 3 column 8 (if smaller than Item 7)	
6. Remainder	$	9. Tax in Bracket three (Item 7 minus Item 8—if Item 8 is the larger, make no entry)	$

10. Total at 1918 Rates for War Profits and Excess Profits as Computed under Section 301 (a) (Item 3, column 8, plus Item 9)	$
11. Total at 1918 Rates for War Profits and Excess Profits, if Computed under Section 302 (see Instructions, page 1, paragraphs 6 and 7)	$
12. Total at 1919 Rates for War Profits and Excess Profits, if Computed under Sections 301 (c) and 302	$

SUMMARY—WAR-PROFITS AND EXCESS-PROFITS TAX.

13. That proportion of Item 10 or 11, or that proportion of the tax computed under Section 303, 304, or 337 (see Instructions, page 1, paragraphs 6 and 7), which the number of months in 1918 is of the number of months in the period	$
14. That proportion of Item 3, column 6, or Item 12, or of the tax computed under Section 303, 304, or 337, which the number of months in 1919 is of the number of months in the period	
15. Total war-profits and excess-profits tax (Item 13 plus Item 14)	$

INCOME TAX.

16. Net income for taxable year (Item 7, Schedule I)	$	20. Amount for income-tax computation (Item 16 less the total of Items 17, 18 and 19)	$
17. Less: Interest on obligations of U. S., not exempt (Item 4, Schedule A, page 2)	$	21. Income tax, 1918 rates, 12%, Item 20	$
18. War-profits and excess-profits tax (Item 15)		22. Income tax, 1919 rates, 10%, Item 20	$
19. Exemption, except for foreign corporations $2,000 unless return is for less than a year (see paragraph 1, page 1, of Instructions)		23. That proportion of Item 21 which the number of months in 1918 is of the number of months in the period	$
		24. That proportion of Item 22 which the number of months in 1919 is of the number of months in the period	
		25. Total income tax (Item 23 plus Item 24)	$

SUMMARY.

26. War and excess-profits tax (Item 15)	$
27. Income tax (Item 25)	
28. Total of Items 26 and 27	$
29. Less allowable credit for income, war-profits, and excess-profits taxes paid or accrued to foreign countries or to possessions of the United States. (Here insert "Total credit claimed" item from Form 1118, which *must* be filled out and attached if such credit is sought)	
30. Total Tax (Total of Items 26, 27, 28, and 29)	$

31. Tax paid: On submission of tentative return (1031T), $..... ; by remittance accompanying this return, $..... Total $.....

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SCHEDULE A—TAXABLE NET INCOME.

NOTE.—Railroad corporations, banks, insurance companies, and other corporations required to submit statements of earnings and expenses to any national, state, municipal, or other public officer may submit instead of Schedule A, a statement of earnings and expenses in the form in which submitted to such officer. In such cases the taxable net earnings will be reconciled by means of Schedule B with the net profit shown by the earnings and expense statement submitted, and should be entered as Item 7, Schedule 1, page 1.

GROSS INCOME.		
1. Gross sales, less returns and allowances	$	
2. Less cost of goods sold, exclusive of expenses, repairs, and other items called for separately below (from Schedule A2)		$
3. Gross income from operations other than trading or manufacturing, less allowances (from Schedule A3)		
4. Interest on obligations of the United States or its possessions not exempt (from Schedule A4)		
5. Interest from other sources (from Schedule A5)		
6. Rentals		
7. Royalties		
8. Share of net income earned during period by personal service corporations (whether received or not)		
9. Dividends on stock of foreign corporations (from Schedule A9), $.....; dividends on stock of domestic corporations other than personal service corporations, $.....; total		
10. Gross income from all other sources except dividends (not including any amount in respect of sales of capital assets or miscellaneous investments—see Item 22, below) (from Schedule A10)		
11. TOTAL OF ITEMS 1 TO 10		$
DEDUCTIONS.		
12. Ordinary and necessary expenses (except amounts reported in Item 2 above or called for separately below, and not including cost or value of capital assets or miscellaneous investments sold during taxable year—see Item 22) (from Schedule A12)	$	
13. Compensation of officers (including salaries, commissions, and other compensation in whatever form paid) (from Schedule A13)		
14. Repairs (including labor, supplies, overhead, and other items properly chargeable to repairs) (from Schedule A14)		
15. Interest (except on indebtedness incurred or continued to purchase or carry obligations or securities, other than obligations of the United States issued after September 24, 1917, the interest on which is wholly exempt from income tax)		
16. Taxes (except Federal income, war-profits, and excess-profits taxes, taxes which are a credit under Section 238, and taxes assessed against local benefits of a kind tending to increase the value of the property assessed)		
17. Debts ascertained to be worthless and charged off within the taxable year		
18. Exhaustion, wear and tear (including obsolescence) (from Schedule A18)		
19. Depletion. If depletion is claimed by a mining company, the information called for by Form A (revised), or if by an oil or gas company, Form N (which forms can be obtained from the Collector), must be submitted with this return		
20. TOTAL OF ITEMS 12 TO 19		$
21. DIFFERENCE BETWEEN ITEMS 11 AND 20		
22. Profit or loss on sales of capital assets and miscellaneous investments (from Schedule A22)	$	
23. Losses sustained during the taxable year, and deducted under Section 234 (a) (4) (from Schedule A23) (extend in last column net total of Items 22 and 23)		$
24. Net income for taxable year exclusive of deductions for dividends and amortization (total of or difference between Items 21 and 23, the latter as extended)		$
25. Dividends received from domestic corporations, not personal service corporations	$	
26. Amortization of war facilities (from Schedule A26) (extend total of Items 25 and 26)		$
27. NET INCOME FOR TAXABLE YEAR (Difference between Items 24 and 26, the latter as extended) (to be entered as Item 7, Schedule 1, page 1)		$

SCHEDULE B—RECONCILIATION OF NET PROFIT PER BOOKS WITH TAXABLE NET INCOME.

1. Net profit for year per books, before any adjustments are made therein	$			
2. Unallowable deductions:				
(a) Donations, gratuities, and contributions				
(b) Income, war-profits, and excess-profits taxes paid or accrued to the United States, its possessions, or a foreign country				
(c) Special improvement taxes tending to increase the value of the property assessed				
(d) Furniture and fixtures, additions, or betterments treated as expenses on the books				
(e) Replacements covered by depreciation				
(f) Insurance premiums paid on the life of any officer or employee for the benefit of the corporation or business				
(g) Interest on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917) the interest upon which is wholly exempt from income tax				
(h) Additions to reserves for bad debts, contingencies, etc. (to be detailed)				
(i)				
(j)				
(l)				
(m) Other unallowable deductions (to be detailed)				
(n)				
3. Distributive share of net income earned during period by personal service corporations not received or accrued on books				
4. Amount necessary to adjust book profit or loss with the amounts reported in Items 22 and 23, Schedule A (unless entry belongs on line 7)				
5. TOTAL	$			

6. Nontaxable income:				
(a) Interest on obligations of the United States and its possessions, wholly exempt	$			
(b) Interest on obligations of States, Territories, and political subdivisions thereof				
(c) Interest on Farm Loan Bonds issued under Federal Farm Loan Act				
(d) Dividends on stock of domestic corporations				
(e) Dividends on stock of personal service corporations declared out of profits earned prior to taxable period				
(f) Other items of nontaxable income (to be detailed)				
(g)				
(h)				
(i)				
7. Charges against reserves for bad debts, contingencies, etc. (to be detailed)				
(a)				
(b)				
(c)				
(d)				
8. Amount necessary to adjust book profit or loss with the amounts reported in Items 22 and 23, Schedule A (unless entry belongs on line 3)				
9. Taxable net income (Item 27, Schedule A)				
10. TOTAL	$			

SCHEDULE C—BALANCE SHEETS.

Attach hereto balance sheets as of the beginning and end of the taxable year (preferably in parallel columns), showing as nearly as practicable the details called for below. (These balance sheets should be prepared from the books and should be in agreement therewith, or any differences should be reconciled.)

ASSETS.

Cash (including cash in bank and on hand, certificates of deposit etc.).
Trade accounts and notes receivable (before deducting reserves for losses).
Other accounts and notes receivable (to be classified).
Inventories:
Raw materials.
Work in progress.
Finished products.
Supplies.
Investments:
U. S. Bonds and obligations (each issue to be stated separately).
Stock of corporations—
Foreign.
Domestic.

ASSETS (Continued).

Investments—Continued—Bonds—
Exempt (municipal, state, etc.).
Other.
Loans and advances:
To officers and employees.
To others.
Deferred charges to future operations.
Fixed assets:
Land.
Buildings.
Machinery
Tools and minor equipment.
Delivery equipment.
Office furniture.
Other (state character).
TOTAL.

ASSETS (Continued).

Fixed Assets—Continued.
Less reserve for depreciation.
NET VALUE.
Patents, good will, and other intangible assets:
Paid for in cash or other tangible property.
Paid for in stock (other than stock dividends).
Created by stock dividend or otherwise.
Discount:
On bonds.
On stock.
TOTAL.

LIABILITIES.

Notes payable:
To officers and stockholders.
To others (including bank loans).
Accounts payable:
Trade.
Other.
Accrued expenses and reserves, the charges creating which are allowable deductions from income (to be detailed).
Reserve for losses on notes and accounts receivable.
Reserves for contingencies, etc., the charges creating which are not allowable deductions from income (to be detailed).
Capital stock outstanding (to be classified).
Surplus and undivided profits.
TOTAL.

A corporation having a net income of $3,000 or more, which was in existence during at least one full prewar year, should also attach to this return similar balance sheets (preferably in parallel columns) as of the beginning of its first full prewar year and as of December 31, 1913.

SCHEDULE D—ANALYSIS OF SURPLUS ACCOUNT.

Attach hereto an analysis of the corporation's surplus account, showing the details of all adjustments of surplus for the taxable year, as nearly as practicable in the following form:

1. Surplus at beginning of year per books.
Add: 2. Total net profit per books and per Schedule B (Item 1).
3. Other credits to surplus (to be detailed).
4. Total of Items 1, 2, and 3.

Deduct: 5. Dividends (state date payable and amount of each, and whether in cash or in stock).
6. Other debits to surplus (to be detailed).
7. Surplus at end of year per books.

A corporation having a net income of $3,000 or more, which was in existence during at least one full prewar year, should also attach to this return a similar analysis of its surplus account for its first full prewar year and for each subsequent year down to the beginning of the taxable year.

2—1919

SCHEDULES SUPPORTING SCHEDULE A

The schedules called for below should be prepared and firmly stapled to this return. Designate each schedule with the number of the item in Schedule A which it explains. Make schedules on paper of uniform size so far as practicable. In the space provided for the purpose on page 6 list all schedules attached to this return, giving the title and schedule number of each. References to Regulations 45 are to revised edition.

SCHEDULE A2: COST OF GOODS SOLD, EXCLUSIVE OF EXPENSES, REPAIRS, AND OTHER ITEMS CALLED FOR SEPARATELY.

In support of Item 2, Schedule A, corporations engaged in manufacturing or trading operations should submit an analysis, in reasonable detail, of the cost of goods sold. This statement should ordinarily include the following items but should not include any expense items called for separately in Schedule A.

1. Inventories at beginning of period (to be reconciled with balance sheet).
2. Purchases during period.
3. Labor and wages ordinarily charged to manufacturing cost on the corporation's books, showing the principal items separately.
4. Other expenses ordinarily charged to manufacturing cost on the corporation's books. (State separately large or unusual items.)
5. TOTAL.

Deduct:

6. Inventories at close of period (to be reconciled with balance sheet).
7. Cost of goods sold (Item 5 less Item 6).

NOTE.—Inventories should be valued at (*a*) cost or (*b*) cost or market, whichever is lower, provided that whichever basis is used must be applied to each item in the inventory and not to a part only. Inventories should be recorded in a legible manner, properly computed and summarized, and should be preserved as a part of the accounting records of the taxpayer. (See Articles 1581 to 1585 of Regulations No. 45.)

If claims for losses on inventories or rebates on sales made under Section 214 (a) 12 of the Act have been allowed, the opening inventory must be correspondingly adjusted. (See Article 266 of Regulations 45.)

State here which of the above-mentioned bases for valuing inventories is used in this

return ....

SCHEDULE A3: GROSS INCOME FROM OPERATIONS OTHER THAN TRADING OR MANUFACTURING, LESS ALLOWANCES.

Submit a schedule showing the nature and amount of the principal items included in Item 3, Schedule A.

Life insurance companies should enter as Item 3, Schedule A, the total premiums received from policyholders less such portion thereof as has been paid back or credited to, or treated as an abatement of premiums of, such policyholders within the taxable year. (See Articles 548 and 549 of Regulations 45.)

Mutual marine insurance companies should report as Item 3, Schedule A, the gross premiums collected and received by them less amounts paid for reinsurance.

SCHEDULE A4: INTEREST ON OBLIGATIONS OF UNITED STATES OR ITS POSSESSIONS NOT EXEMPT.

For exemptions on interest on Liberty Bonds or other obligations of the United States, see Articles 77 to 82, Regulations 45.

Attach hereto schedule showing in separate columns the following information with respect to obligations of the United States issued since September 24, 1917:

(1) Class of obligations (list each issue separately).

(2) First and last dates of each period during which the corporation's holdings of that class of obligations remained unchanged.

(3) Amount of obligations of that class held by the corporation during each such period.

(4) Amount by which each amount entered in column (3) exceeds the maximum exemption for that class of obligations.

(5) Rate of interest.

(6) Interest derived from each amount of principal stated in column (4).

Enter as Item 4, Schedule A, the total of column (6) for all classes of obligations.

Submit also a statement showing the amount of interest derived from bonds and other obligations of the United States and its possessions, exclusive of those described in the table above.

SCHEDULE A5: INTEREST FROM OTHER SOURCES.

Submit a schedule showing the source, nature, and amount of the principal items included herein, the minor items being grouped in one figure. The total of the schedule should be entered as Item 5, Schedule A.

For interest on foreign bonds submit a schedule showing (*a*) name of country; (*b*) kind of obligations (whether national, state, municipal, or corporate obligations); (*c*) amount of principal; and (*d*) amount of interest.

SCHEDULE A9: DIVIDENDS ON STOCK OF FOREIGN CORPORATIONS.

Submit a schedule showing (*a*) name of corporation; (*b*) country in which organized; (*c*) total par value of stock held; and (*d*) amount of dividends.

SCHEDULE A10: GROSS INCOME FROM ALL OTHER SOURCES EXCEPT DIVIDENDS (not including any amount in respect of capital assets or miscellaneous investments).

Submit a schedule showing the source, nature, and amount of the principal items included herein, the minor items being grouped in one figure. The total of the schedule should be entered as Item 10, Schedule A.

SCHEDULE A12: ORDINARY AND NECESSARY EXPENSES (except amounts called for separately in Schedule A and not including cost or value of capital assets or miscellaneous investments sold during taxable year).

Submit a statement showing character and amount of the principal items included in Item 12, Schedule A.

Insurance companies should state separately in Schedule A12 (*a*) the net addition required by law to be made within the taxable year to reserve funds (including in the case of assessment insurance companies the actual deposit of sums with state or territorial officers pursuant to law as additions to guarantee or reserve funds; and (*b*) the total of sums other than dividends paid within the year on policy and annuity contracts.

Corporations issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan continuing for life and not subject to cancellation should report in Schedule A12 such part of the net addition (not required by law) made within the taxable year to reserve funds as the Commissioner finds to be required for the protection of the holders of such policies.

Mutual marine insurance companies should report in Schedule A12 amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment and the payment thereof.

Mutual insurance companies (other than mutual life and mutual marine insurance companies) that require their members to make premium deposits to provide for losses and expenses should report in Schedule A12 the amount of premium deposits returned to their policyholders and the amount of premium deposits retained for the payment of losses, expenses, and reinsurance reserves (unless deducted elsewhere in Schedule A).

SCHEDULE A13: COMPENSATION OF OFFICERS.

Submit a schedule showing for each officer (1) name; (2) duties; (3) time devoted to such duties; (4) shares of stock owned, (*a*) common, (*b*) preferred; (5) total annual compensation for the taxable years 1917, 1918, and 1919; and (6) reasons for increases.

SCHEDULE A14: REPAIRS (including labor, supplies, overhead, and other items properly chargeable to repairs).

Submit a schedule showing the nature and amount of the principal items included in Item 14, Schedule A.

Incidental repairs, which do not add to the value or appreciably prolong the life of property, are deductible as expenses. Expenditures for new buildings or for permanent improvements or betterments which increase the value of the property are chargeable to capital account. Expenditures for restoring or replacing property are not deductible under this or any other item of the return. Such expenditures are chargeable to capital account or to depreciation reserves, depending on the treatment of depreciation on the books of the taxpayer.

SCHEDULE A18: EXHAUSTION, WEAR AND TEAR (including obsolescence).

Submit a columnar schedule containing, in the most practicable form, substantially the following information:

1. A classification of depreciable assets subdivided on the bases of (*a*) character, (*b*) term of useful life.

2. The year of acquisition of such assets if prior to tax year. If acquired during tax year, give actual date.

3. Nature and amount of consideration given in payment.

4. The fair market value of such assets March 1, 1913, if acquired before that date.

5. The estimated life or term of reasonable usefulness of such assets from date acquired or from March 1, 1913, if acquired prior thereto. Give reasons for your conclusions.

6. For each class of assets state—

(*a*) The total provision for depreciation made on the books of the corporation from date of acquisition to the beginning of the taxable year.

(*b*) The total amount of depreciation (exhaustion, wear and tear, including obsolescence) claimed for the taxable year.

7. A reconciliation of all figures in this schedule with corresponding figures reflected in the balance sheets.

8. If any plan of depreciation other than the "straight line" method contemplated by the above instructions is used, a full explanation thereof, with justification, should be given.

SCHEDULES A22 and A23: PROFIT OR LOSS ON SALES OF CAPITAL ASSETS and miscellaneous investments, and losses sustained during the taxable year from fire, storm, or other casualty, or from theft, not compensated for by insurance or otherwise.

Submit a columnar schedule setting forth for each sale of capital assets or of miscellaneous investments and for each loss during the taxable year the information called for below:

1. Description of property sold or of property in respect of which a loss is claimed.

2. Date acquired.

3. Fair market price or value on March 1, 1913, if acquired before that date, or cost if acquired after February 28, 1913.

4. Cost of improvements, if any, since February 28, 1913, or since date of acquisition, if acquired after February 28, 1913.

5. Total of Items 3 and 4.

Less—

6. Depreciation or depletion of property subject thereto—

(*a*) Per books.

(*b*) Accrued but not on books.

7. Salvage value, if any, of property on which a loss is claimed.

8. Amount of insurance or other recovery on property, if any.

9. Proceeds of sale or cash value of property received in exchange (for transactions falling in Item 22, Schedule A) (see Note below).

10. Total of Items 6 to 9, inclusive.

11. Profit or loss.

12. Cause of loss (for losses falling in Item 23, Schedule A).

NOTE.—Submit evidence substantiating the basis used by you in arriving at the cash value of property received in exchange for other property.

SCHEDULE A26: AMORTIZATION OF WAR FACILITIES.

Taxpayers making claim for amortization should spread the amortization allowance in accordance with the profits of the business over the entire amortization period in monthly estimates, and should enter as their amortization deduction in this return the aggregate amount assigned to those months of the amortization period which are included in the fiscal year of the taxpayer. Taxpayers making return for a fiscal year ending in 1919 should interpret Article 185 of Regulations 45 as above set forth. Taxpayers will also submit a schedule containing information called for in Article 188, Regulations 45.

COMPENSATION AT RATE OF $3,000 OR MORE PER ANNUM.

Submit a schedule showing for each employee (if a stockholder of the corporation), whose compensation is at the rate of $3,000 or more per annum, facts similar to those called for in Schedule A13.

WORKING PAPERS.

Every corporation should preserve, available for inspection by a revenue officer, working papers showing—

1. The balance in each account on the corporation's books that was used in preparing Schedule A.
2. The amount deducted from each such balance on account of each class of non-taxable income, unallowable deductions, and other adjustments indicated in Schedule B, with a reference to the number of the item in Schedule B in which each amount so deducted was included.
3. The remainder of each such balance, analyzed to show the amount included in each item of Schedule A, with a reference to the number of the item in Schedule A in which each such amount was included

Page 4—Invested Capital Schedules

SCHEDULE E—CAPITAL, SURPLUS, AND UNDIVIDED PROFITS AS SHOWN BY BOOKS BEFORE ANY ADJUSTMENTS ARE MADE THEREIN.

E4. Stock actually outstanding at the end of the preceding taxable year should be entered in this schedule to the extent that it is paid up. If stock or shares were issued at a nominal value or without par value, the entries should reflect the amounts on the books in respect thereof at the close of the preceding taxable year.

E5. This item should include paid-in surplus per books at the end of the preceding year. If any amount is claimed under Section 326 (*a*) (2) of the Revenue Act of 1918 or under Article 837 of Regulations 45 the amount claimed should be entered under Item 1, Schedule F, and not in this schedule.

E7. Reserves which represent allocations of surplus and were not accumulated through deductions made in computing net income as returned in previous years may, if properly explained, be entered on line 7. Such entries should be identified and if necessary reconciled with balance-sheet reserves.

E9. The cost (or book value if different from cost) of treasury stock held at the end of the preceding taxable year should be deducted on line 9, if the par value of such stock is included in the amount entered on line 4. Treasury stock includes all stock reacquired by the corporation and not canceled, regardless of the reason for the acquisition.

Item.	1911				1912				1913				Taxable Year.			
Capital stock paid up and actually outstanding at the close of the preceding year:																
1. First preferred	$				$				$				$			
2. Second preferred																
3. Common																
4. Total	$				$				$				$			
Surplus and undivided profits:																
5. Paid-in surplus																
6. Earned surplus and undivided profits																
7. Reserves, additions to which are not deductible in computing net income (to be reconciled with balance-sheet items)																
8. Grand totals of Items 4, 5, 6, and 7	$				$				$				$			
9. Deduct cost of treasury stock (or book value if different from cost), if any is included above as outstanding																
10. Net total (Item 8 minus Item 9)	$				$				$				$			

SCHEDULE F—ADJUSTMENTS BY WAY OF ADDITIONS.

F1. If an addition to invested capital is claimed in Item 1, Schedule F, submit a statement showing (*a*) the kind of property, (*b*) the year in which it was paid in, (*c*) from whom acquired, explaining his relationship to the corporation, (*d*) the actual cash value of such property at the date when paid in, (*e*) the par value of stock or shares issued therefor and the amount at which such property is entered in the accounts, (*f*) the basis upon which the actual cash value of the property was determined and the date when such determination was made, and (*g*) the amount of depreciation sustained on such property from the date of acquisition to the beginning of the taxable year.

F2. If an addition to invested capital is claimed in Item 2, Schedule F, submit a statement showing (*a*) the kind of property, (*b*) the year in which it was acquired, (*c*) its cost, (*d*) the amount of depreciation sustained on such property from the date of acquisition to the beginning of the taxable year. State also whether each item sought to be restored was actually used or usable at the beginning of the taxable year. Were these expenditures, when made, written off in lieu of depreciation? .... If so, explain what adjustments have been made to provide for depreciation, in view of the proposed restoration to surplus. Additions in this item are cumulative to the beginning of the respective taxable years. For all additions hereunder, provision must be made for depreciation to the beginning of the respective taxable years.

F3. If any addition to invested capital is claimed in Item 3, Schedule F, state specifically the amount of depreciation written off each year in the books of the company, and the amount allowed as a deduction in computing net income. Additions in this item are cumulative to the beginning of the respective taxable years.

F4. If any assets of the trade or business in existence during both the taxable year and any prewar year are included in the invested capital for the taxable year but not for such prewar year, or are valued on a different basis in computing the invested capital for the taxable year and such prewar year, entries should be made in this schedule adjusting the invested capital for each prewar year affected so as to value such assets upon the same basis in the prewar period as in the taxable year.

Item.	1911				1912				1913				Taxable Year.			
1. Actual cash value of tangible property clearly and substantially in excess of par value of stock issued therefor or of the cash or other consideration paid therefor (Articles 836 and 837)	$				$				$				$			
2. Additions to surplus (Articles 840 to 843)																
3. Depreciation charged in the accounts of the corporation but not allowable as a deduction on income tax returns																
4. Adjustment of valuation of assets in existence both during taxable year and in prewar period (Article 934)													x x x	x x x	x x x	x x
5.																
6.																
7.																
8. Total	$				$				$				$			

SCHEDULE G—ADJUSTMENTS BY WAY OF DEDUCTIONS.

G1. Is any patent, copyright, secret process, or formula, good will, trade-mark, trade brand, franchise, or other similar intangible property, paid in for stock, carried as an asset by the corporation? .... If so, is it entered on the books at a value in excess of its actual cash value when paid in? .... In excess of the par value of the stock issued therefor? .... Is the aggregate of such assets acquired prior to March 3, 1917, entered on the books at a value in excess of 25 per cent of the par value of the stock outstanding on March 3, 1917? .... Is the aggregate of such assets entered on the books at a value in excess of 25 per cent of the par value of the stock outstanding at the beginning of the taxable year? ....

If the answer to any of the foregoing questions is "yes," submit a statement showing separately with respect to such assets acquired (1) before March 3, 1917, and (2) on or after that date: (*a*) Date of acquisition; (*b*) cash value at that date, with a complete explanation of the basis upon which such cash value was determined; (*c*) par value of the stock issued therefor; (*d*) par value of total stock outstanding March 3, 1917; (*e*) par value of total stock outstanding at the beginning of the taxable year; (*f*) the value at which such assets are entered on the books of the corporation.

If all the intangibles were acquired before March 3, 1917, the amount by which (*f*) exceeds (*b*), (*c*), 25 per cent of (*d*), or 25 per cent of (*e*), whichever is lowest, must be entered as Item 1, Schedule G, for the taxable year and for each year of the prewar period that is affected.

If the intangibles were acquired on or after March 3, 1917, the amount by which the entry in (*f*) relating to such intangibles exceeds (*b*) or (*c*) relating thereto, or 25 per cent of (*e*), whichever is lowest, must be included in Item 1, Schedule G, for the taxable year: Provided, that if intangibles were acquired before March 3, 1917, and also on or after that date, deduction shall be made so that the amount included in invested capital for the aggregate of intangibles shall not exceed 25 per cent of the par value of the total stock outstanding at the beginning of the taxable year.

NOTE.—If the stock of the corporation was issued at a nominal value or without par value, for the purpose of the computation under Item 1 the par value shall be deemed to be the fair market value as of the date or dates of issue. The aggregate value so determined of stock outstanding on March 3, 1917, or at the beginning of the taxable year, shall be the basis for the computation.

G2. Is any tangible property, paid in for stock, carried as an asset by the corporation? .... If so, is it entered on the books at a value in excess of its actual cash value when received? .... In excess of the par value of the stock paid therefor? ....

If the answer to either of the foregoing questions is "yes," submit a statement showing (*a*) kind of property; (*b*) when acquired; (*c*) par value of the stock paid therefor; (*d*) actual cash value of the property when paid in; (*e*) the basis on which that value was determined; (*f*) value at which the property is entered on the corporation's books; and (*g*) amount by which such value exceeds the allowable value under section 326 (*a*) (2) of the Revenue Act of 1918. Enter this amount as Item 2, Schedule G, for the taxable year and for each year of the prewar period that is affected.

G3. (*a*) Was any stock issued by the corporation ever returned as a gift or for a consideration substantially less than its par value? .... (*b*) If so, what was the total par value of such stock? $.......... (*c*) What was the consideration paid for the return thereof? $.......... (*d*) What amount of cash or its equivalent was derived from the resale of such stock? $.......... (*e*) What entries were made in the accounts to evidence the return and the resale of such stock? ....

The excess of (*b*) over (*d*) must be entered as Item 3, Schedule G, for the taxable year and for each year of the prewar period that is affected. However, no deduction is necessary if adequate adjustment has been made under Item 2 of this schedule.

G4. Was the business reorganized or consolidated or was its ownership changed or was there a change in ownership of property after March 3, 1917? .... If so, answer the following questions:

(*a*) Did an interest of 50 per cent or more in the business or in the property which changed ownership remain in the control of the same persons, corporations, associations, or partnerships, or of any of them? ....

(*b*) Were any of the assets entered on the books of the corporation making this return at a higher value than on the books of its predecessor? ....

(*c*) If such previous owner was not a corporation attach a statement showing (1) the cost of acquisition to the previous owner of any asset so transferred or received; (2) expenditures subsequent to that date for betterment or development, not deducted as expense or otherwise since March 1, 1913, by such previous owner; (3) the allowance for depreciation, depletion, or impairment since the date of acquisition by such previous owner.

(*d*) If all, or substantially all, of the property was acquired from a corporation during the taxable year attach hereto balance sheets of such predecessor corporation as of the beginning of the taxable year and as of the date immediately prior to the transfer of the property to the corporation making this return, and also a balance sheet or statement of the corporation making this return showing the values at which such property received or transferred was entered on the books.

The increase in book value of any property acquired by reorganization, consolidation, or change of ownership, over the amount allowable to the predecessor corporation or over the amount as computed under (*c*), if the previous owner was not a corporation, must be deducted from the invested capital for the taxable year as Item 4, Schedule G.

G5. Is any property (including physical property, securities, and intangible property) paid for with cash or with other tangible property entered on the books of the corporation at a value in excess of the amount of cash paid therefor or the actual cash value of the tangible property paid therefor? .... If so, submit a statement showing (*a*) kind of property; (*b*) amount of cash paid therefor; (*c*) actual cash value of other tangible property paid therefor; (*d*) how that value was determined; (*e*) value at which the property is entered on the books of the corporation; and (*f*) excess of (*e*) over (*b*) or (*c*). This excess must be entered as Item 5, Schedule G, for the taxable year and for each year of the prewar period that is affected.

G6. Has adequate provision been made in the expense accounts of the company for (*a*) losses of every kind? ....; (*b*) depreciation? ....; (*c*) obsolescence? .... (*d*) depletion of mineral deposits, timber supplies, and the like? ....

If adequate charge has not been made for depreciation, depletion, obsolescence, and other losses, and the value of the property has not been maintained by replacements that have been charged to expense, proper additional charges therefor must be computed for all years in which they were not made on the books, and the total amount of such charges must be entered as Item 6, Schedule G, for the taxable year (and for each year of the prewar period that was affected) and deducted in arriving at the surplus and undivided profits.

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SCHEDULE G—ADJUSTMENTS BY WAY OF DEDUCTIONS (Concluded).

Item.	1911	1912	1913	Taxable Year.
1. Valuation of patents, copyrights, secret processes, or formulæ, good will, trade-marks, trade brands, franchises, or other intangible property	$	$	$	$
2. Valuation of tangible property paid in for stock				
3. Stock returned to the corporation as a gift, etc.				
4. Valuation of assets acquired in reorganizations				
5. Appreciation				
6. Depreciation and depletion				
7.				
8.				
9. Total Deductions	$	$	$	$

SCHEDULE H—CHANGES IN INVESTED CAPITAL DURING TAXABLE YEAR.

1. Changes in invested capital during the taxable year ordinarily arise in one or more of the following ways:
   (a) Additions by reason of the sale of capital stock or the issue of capital stock for tangible or other assets.
   (b) Liquidation of part of the capital by retirement of stock or purchase of treasury stock not out of current earnings.
   (c) Payment of cash dividends out of earnings of prior years.
   (d) Deduction of the amount of Federal income and excess-profits taxes for the previous year.
   (e) Payment of assessments by stockholders, or creation of paid-in surplus by contribution of stockholders.

The changes with respect to taxes probably will occur in every case, and with respect to dividends in most cases. Should no changes respecting these be noted, the reasons for their omission should be stated.

2. The following instructions should be followed in making the above adjustments. Each item should be designated as an addition or distribution, distributions being designated by red ink or otherwise.
   (a) If stock is issued for cash, the actual cash received (but not the amount of discount) should be entered in this schedule. Assets (other than cash) paid in for stock must be valued in accordance with Section 326 (a) (3) of the Revenue Act of 1918.
   (b) If capital stock of the corporation is reacquired but not paid for out of current profits, the cost of such stock should be deducted from invested capital.
   (c) Report dividends paid out of profits of prior years but not dividends paid out of profits of the taxable year. Any distribution made during the first 60 days of the taxable year shall be deemed to have been made from earnings or profits accumulated during preceding taxable years; but any distribution made during the remainder of the taxable year shall be deemed to have been made from the profits for that year to the extent that such profits are sufficient. (See Article 1542.)
   (d) The amount of Federal income and excess-profits taxes payable should be deducted as of the date when due and payable whether reserves have been set up on the books or not. (See Article 845.)

3. The data called for in columns 1 to 5 should be given for all transactions, except that columns 3 and 4 are applicable only to the issue or reacquisition of the corporation's stock.

4. In Column 6 enter the number of days remaining in the taxable year (including the date of change).

5. The net changes, if not in accordance with the increases or decreases reflected in the balance sheets, should be fully reconciled therewith.

1. Nature of Additions and Distributions.	2. Date.	3. Number of Shares Sold or Reacquired.	4. If for Cash, State Price per Share.	5. Amount of Cash or Cash Value Actually Received or Paid Out.	6. Number of Days Effective.	7. Adjusted Average. (Column 5 × Column 6 / Number of days in taxable year.)
1.			$	$		$
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						

SCHEDULE J—CHANGES IN INVESTED CAPITAL DURING PREWAR YEARS.

(Compute the net addition or reduction separately for each year. See instructions under Schedule H.)

1. Nature of Additions and Distributions.	2. Date.	3. Number of Shares Sold or Reacquired.	4. If for Cash, State Price per Share.	5. Amount of Cash or Cash Value Actually Received or Paid Out.	6. No. of Days Effective.	7. Adjusted Average. (Column 5 × column 6 / Number of days in year.)
1.			$	$		$
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						

SCHEDULE K—CHANGES IN INVESTED CAPITAL FROM END OF PREWAR PERIOD TO BEGINNING OF TAXABLE YEAR, NOT SHOWN IN SCHEDULE D.

(See instructions under Schedule H, so far as applicable.)

1. Nature of Additions and Distributions.	2. Date.	3. Number of Shares Sold or Reacquired.	4. If for Cash, State Price per Share.	5. Amount of Cash or Cash Value Actually Received or Paid Out.
1.			$	$
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				

SCHEDULE I.—INADMISSIBLE ASSETS.

Has the corporation any inadmissible assets (i. e., stocks, bonds, and other obligations, except obligations of the United States, the income from which is not taxable)?.....

If so, attach hereto a statement showing for 1911, 1912, 1913, and the taxable year, separately, the facts called for in Items (a) to (j) of this schedule.

If the income from such assets consists in part of gain or profit from the sale or other disposition thereof, or if all or part of the interest derived from such assets is in effect included in the net income because of the limitation on the deduction of interest under Section 234 (a) (2) of the Revenue Act of 1918, then a corresponding part of the capital invested in such assets is deemed an admissible asset. In such case, set forth in detail—

(a) The various kinds of income derived from such assets and the computation of the part of the capital invested therein which is deemed an admissible asset.

For the purpose of this schedule, inadmissible assets shall be valued at cost of acquisition except that if the taxpayer has in previous years been allowed a deduction on account of the fall in the market value of securities, such assets shall be valued at cost less the deduction allowed. Admissible assets shall be valued as provided in Sections 326, 330, and 331 of the Revenue Act 1918 and Articles 831–869, 931–934, and 941 of Regulations 45. The average amount of assets of each kind held during any year may ordinarily be determined by dividing by 2 the sum of the amount of such assets held at the beginning of the year and the amount held at the end of the year. In such case the amount of admissible assets may best be determined from (1) the balance sheet as of the beginning of the year *adjusted* with respect to the items in Schedules F and G, and (2) the balance sheet as of the end of the year correspondingly adjusted. But if at any time during the year a substantial change has taken place in the amount of such assets, the average amount must be determined as provided in Article 852 of Regulations 45. In such case, show in detail—

(b) The computation of such amount.

State also—

(c) Amount of inadmissible assets held at beginning of the year;
(d) Amount of inadmissible assets held at end of year;
(e) Average amount of inadmissible assets held during year,
(f) Amount of admissible assets held at beginning of the year;
(g) Amount of admissible assets held at end of year;
(h) Average amount of admissible assets held during year;
(i) Sum of (e) plus (h);
(j) Percentage which (e) is of (i).

This percentage (j) for each year should be applied to the figures for that year appearing on line 7, Schedule II, in order to obtain the deduction on account of inadmissible assets, which should be entered on line 8, Schedule II.

QUESTIONS.

KIND OF BUSINESS.

1. Explain below the nature of the corporation's business in sufficient detail to show in which of the following general classes of activities it falls:

(1) Agriculture and related industries, including fishing; (2) mining, quarrying, and related industries; (3) manufacturing; (4) construction; (5) trading; (6) transportation; (7) storage; (8) other services; (9) banking and insurance.

2. If the business falls in any of the classes from 1 to 5, state the special product or products handled; if in class 5, state whether wholesale or retail, or both; if in class 6, state whether rail, water, or other, whether general or local, and the special commodities (if any) transported; if in class 7, state the special commodities stored (if any) or the special kind of storage; if in class 8, state in detail the kind of service rendered; if in class 9, state the branch of banking or insurance engaged in.

3. In all cases state whether the corporation acts as principal (using its own capital) or as agent or broker (on commission) or as both.

(a) Main business.....

.....

.....

(b) Collateral businesses, if any.....

.....

.....

.....

.....

.....

OTHER CONCERNS IN SAME BUSINESS.

4. Enter on the following lines the names and addresses of five representative concerns in your locality or section of the country engaged in the same kind of business:

.....

.....

.....

.....

.....

INCORPORATION.

5. Date of incorporation.....

6. Under the laws of what State or country?.....

PREDECESSOR BUSINESSES.

7. If the corporation was not in existence during the whole of any one of the calendar years 1911–1913, is it in any way an outgrowth, result, continuation, or reorganization of a business which was in existence during the whole of any one of these years?.....
If the answer to preceding question is "Yes," give name under which, and address at which, the business of the predecessor was then carried on .....

.....

Is the present organization substantially a continuation of the predecessor?.....

Give reasons for your last conclusion.....

.....

Have you used the prewar data of the predecessor organization in the preparation of this return?.....

REORGANIZATION AND ACQUISITION OF MIXED AGGREGATES OF ASSETS.

8. Has the corporation, *or any of its predecessors*, ever been reorganized, or has it, *or a predecessor*, ever taken over a going business or acquired a mixed aggregate of tangible property, patents, and copyrights, and good will and other similar intangible property, and paid for such property in whole or in part with stock or other securities?.....

.....

9. If so, furnish a brief narrative history of the business and submit a statement showing—

(a) The name of the concern taken over (or from which the property was acquired);
(b) The nature of the assets and liabilities so acquired;
(c) The total par value of the stock issued therefor;
(d) The value at which each class of assets was carried on the books of the concern from which acquired (if obtainable, submit a balance sheet of the predecessor concern as of the date of acquisition or as of the close of its last accounting period prior thereto);
(e) The value at which each item was entered on the books of the corporation making this return.

10. If patents, copyrights, secret processes or formulæ, good will, trade-marks, trade brands, franchises, or other intangible property were acquired, state also the basis on which their value was determined and how they were paid for.

11. If, at the time of any purchase or reorganization as contemplated in question 8, any property was entered on the books of the reorganized concern or any vendee predecessor at a value in excess of that at which it was carried on the books of the vendor concern, state the basis on which the revaluation was made.

AFFILIATIONS WITH OTHER CORPORATIONS (TO BE ANSWERED BY EVERY CORPORATION).

12. Do you own directly or control through closely affiliated interests or by a nominee or nominees over 50 per cent of the outstanding capital stock of another corporation or of other corporations?.....

13. Is over 50 per cent of your capital stock owned by another corporation or by two or more corporations that are affiliated?.....

14. Is over 50 per cent of your capital stock as well as over 50 per cent of the capital stock of another corporation or of other corporations owned or controlled by the same individual or partnership or by the same individuals or partnerships?.....

15. Is this return a consolidated return within the meaning of Articles 631 to 638, inclusive, of Regulations 45?.....

16. Affiliated corporations as indicated in 12, 13, or 14 above must comply with the following requirements:

17. If the answer to question 12 is "yes," submit a statement showing for each of the corporations over 50 per cent of whose stock is owned or controlled by you, either directly or through closely affiliated interests or by a nominee or nominees—

(a) The name and address;
(b) The total par value of the outstanding capital stock at the beginning of the taxable year, and the date and amount of each change, classifying this data as to common and preferred, voting and nonvoting stock;
(c) The total par value of such outstanding capital stock owned or controlled by you at the beginning of the taxable year, or at the date of acquisition if acquired during the taxable year, and the date and amount of each change therein.

18. If the answer to question 13 is "yes," state—

(a) The name and address of such corporation or corporations;
(b) The par value and percentage of your stock held by each, classified as to common and preferred, voting and nonvoting.

19. If the answer to question 14 is "yes," submit a statement showing—

(a) The names and addresses of such corporations;
(b) The name or names and address or addresses of the owning or controlling interest or interests;
(c) The total par value of the outstanding capital stock of each corporation at the beginning of the taxable year, and the date and amount of each change therein, classifying this data as to common and preferred, voting and nonvoting stock;
(d) The total par value of each class of the outstanding capital stock of each corporation owned or controlled by each one of the several individuals or partnerships at the beginning of the taxable year, and the date and amount of each change therein.

20. If the answer to question 15 is "yes," the information furnished under 17 and 19 should identify the corporations included in the consolidation.

21. If one corporation owns 95 per cent or more of the outstanding voting stock of another, or if 95 per cent or more of the outstanding voting stock of two or more corporations is owned by the same individual or individuals in substantially the same proportion, a consolidated return must be filed, except that the limitations as to consolidation under Article 635 must be observed. If the ownership is less than 95 per cent of the outstanding voting stock, but exceeds 50 per cent, the parent corporation or principal corporation of any group of affiliated corporations must furnish the information called for above and in addition must file a statement fully disclosing the details of affiliation other than stock ownership and all other information which will be helpful in determining whether or not a consolidated return should be filed.

VALUATION OF CAPITAL STOCK.

22. What was the fair value of the total capital stock of the corporation as determined in the last assessment of the capital stock tax (if any)? $..... Date of that assessment.....

LIST OF ATTACHED SCHEDULES.

Attach hereto a list of all schedules accompanying this return, giving for each a brief title and the schedule number.

We, the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return made in good faith pursuant to the Revenue Act of 1918 and the Regulations issued thereunder.

Sworn to and subscribed before me this..... day of ....., 19.....

Seal of officer taking affidavit.

.....
President.

.....
(Official capacity.)

.....
Treasurer.

INSTRUCTIONS REGARDING DETERMINATION OF CREDITS, COMPUTATION OF TAX, ETC.

PROVISIONS AFFECTING INVESTED CAPITAL AND CREDITS.

RETURNS FOR PART OF A YEAR.

1. If this return is for a period less than a full year, Items 3 and 8, Schedule III; Items 1 and 2, column 2, Schedule IV; and Item 19, Schedule IV, shall be reduced to as many twelfths of the figures for a full year as there are months in the period for which the return is made.

If the period for which the return is made includes fractions of months, there shall be added to the number of complete months as many thirtieths of a month as there are days in the fractional parts of months.

CORPORATIONS NOT IN EXISTENCE DURING PREWAR PERIOD.

2. If a corporation was not in existence during the whole of at least one calendar year in the prewar period, provided a majority of its capital stock was not owned or controlled, directly or indirectly, at any time during the taxable year by a corporation in existence during the whole of at least one calendar year in the prewar period, and provided its gross income does not include 50 per cent or more of gains, profits, commissions, or other income derived from a Government contract or contracts made after April 5, 1917, and before November 12, 1918, the war-profits credit shall be (*a*) the sum of $3,000 plus (*b*) the same percentage of the invested capital for the taxable year (not less than 10 per cent, however) as the average per cent of net income to invested capital for the prewar period of corporations engaged in a trade or business of the same general class as the taxpayer.

3. Pending a determination of the deduction by the Commissioner, such corporation shall deduct 10 per cent of the invested capital for the taxable year. (See Section 311 (*c*, *d*) of the Revenue Act of 1918 and Articles 783 and 784 of Regulations 45.)

CREDIT FOR INCOME, WAR-PROFITS, AND EXCESS-PROFITS TAXES PAID OR ACCRUED TO FOREIGN COUNTRY OR POSSESSION OF THE UNITED STATES.

4. If a credit is claimed in Item 29, Schedule IV, a copy of Form 1118, completely filled out and sworn to or affirmed, must be submitted with this return. If credit is sought for taxes already paid the form must have attached to it the receipt for each such tax payment. If credit is sought for taxes accrued the form must have attached to it the return on which each such accrued tax was based. (See Article 611 of Regulations 45.)

5. When a credit is claimed for accrued taxes, the Commissioner may, as a condition precedent to the allowance of this credit, require the corporation to give a bond (Form 1119), with sureties satisfactory to and to be approved by him, in such penal sum as he may require, conditioned for the payment by the taxpayer of any amount of taxes found due if the taxes when paid differ from the amount claimed in respect thereof.

PROVISIONS AFFECTING COMPUTATION OF WAR-PROFITS AND EXCESS-PROFITS TAX.

6. In most instances the amount of the tax will be found as follows:

(A) By finding the amount of war and excess-profits tax at the rates for 1918 and for 1919.

(B) By finding the proportion of the amount of war and excess-profits tax computed for 1918 which the number of months in 1918 bears to the total number of months in the period.

(C) By finding the proportion of the amount of war and excess-profits tax computed at the rates for 1919 which the number of months in 1919 bears to the total number of months in the period.

(D) By adding the amounts found under (B) and (C) above.

(E) By finding the amount of the income tax at the rates for 1918 and for 1919.

(F) By finding such proportion of the income tax computed at the 1918 rates as the total of months in 1918 bears to the total of months in the period.

(G) By finding such proportion of the income tax computed at the 1919 rates as the total of months in 1919 bears to the total of months in the period.

(H) By adding (F) and (G) above.

(I) Total tax will be the sum of (D) and (H) above.

Should computation be necessary under other sections than 301(*a*) or 301(*b*), the following applies:

(*a*) **Limitation on total tax.**—The maximum war-profits and excess-profits tax imposed for 1918 shall in no case be more than 30 per cent of the net income in excess of $3,000 and not in excess of $20,000 plus 80 per cent of the net income in excess of $20,000; for 1919 the amounts shall be no more than 20 per cent of the net income in excess of $3,000 and not in excess of $20,000, plus 40 per cent of the net income in excess of $20,000. (Section 302.)

If the computation at the rates specified in Section 301 as for 1918 exceeds the limitation as for that year, then the limited amount for 1918 rates is the amount computed at the rates for that year; if the computation at the rates specified in Section 301 as for 1919 exceeds the limitation as for that year, then the limited amount for 1919 rates is the amount computed at the rates for that year.

(*b*) **Government contract.**—If net income has been derived from a Government contract, or Government contracts, made between April 6, 1917, and November 11, 1918, both dates inclusive, in excess of $10,000, the computation would be at the rates for each year as under Section 301, regardless of the fact that the contract may have been concluded in 1918, or may not have continued throughout the fiscal year. (See Articles 714 and 719 of Regulations 45.)

(*c*) **Tax on profits from sale of mineral deposits.**—In the case of a bona fide sale of mines, oil or gas wells, or any interest therein, where the principal value of the property has been demonstrated by prospecting or exploration and discovery work done by the taxpayer, the portion of the war-profits and excess-profits tax attributable to such sale shall not exceed 20 per cent of the selling price of such property or interest. (See Articles 971 and 972 of Regulations 45, and Section 337 of the Act.)

The first step is to find the war and excess-profits tax computed without regard to this provision; the second is to find of the tax thus computed such portion as the net income from the sale bears to the total net income. If this portion equals or does not exceed 20 per cent of the selling price then no adjustment is permitted. Should such portion exceed 20 per cent of the selling price, then, first, find such portion of the war and excess-profits tax as the net income not attributable to the sale bears to the total net income; and secondly, add to this 20 per cent of the selling price of the mineral deposits.

(*d*) **Tax of corporation engaged in mining of gold.**—If a corporation was engaged in the mining of gold, its war and excess-profits tax shall be that proportion of Item 15, Schedule IV, which the net income not derived from the mining of gold bears to the total net income (Articles 752 and 753, Regulations 45—Section 304 (*c*) of the Act.)

(*e*) **Tax of corporation whose income is derived in part from "personal service."**—If part of the net income (not less than 30 per cent) is derived from a separate trade or business of the character of "personal service," the tax shall be computed in accordance with the provisions of Articles 741 to 743, Regulations 45 (Sec. 303 of the Act).

7. **Statement of basis of claims.**—If the corporation claims the benefit of one or more of these provisions, it should attach to the return a complete statement of the basis for such claim and a computation of the tax payable in the event that such claim is allowed. The amount of tax so computed should be entered in Schedule IV, but, except in cases falling under (*a*) above, the taxpayer must nevertheless fill out all the schedules of this form. Submit a schedule respecting each Government contract made between April 6, 1917, and November 11, 1918, both dates inclusive, from which income was derived during the taxable year. In the case of affiliated companies, this information should be shown separately for each company. This schedule will be in the form of columns, the left-hand column specifying the following information as respects each contract:

(*a*) Amount of contract;
(*b*) Gross income from contract during period;
(*c*) Expenses directly applicable to each contract.

Total of each column should be shown. There should also be shown in the most practicable form:

(*d*) Total gross income of corporation;
(*e*) Percentage which total of column (*b*) is of (*d*);
(*f*) Total general expenses, losses, and deductions of corporation;
(*g*) Amount of (*f*) allocated to Government contracts (total);
(*h*) Percentage which (*g*) is of (*f*).

If the allocation of general expenses, losses, and deductions differs from the percentage which the gross income from the Government contract or contracts bears to the total gross income, there shall be submitted a statement showing what items and the amounts thereof have been otherwise allocated, and the reasons therefor. If a claim is made under Section 327 of the Statute, gains, profits, commissions, or other income, derived on a cost-plus basis from a Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive, should be shown separately from income from Government contracts of different character.

SPECIAL CASES.

8. **Definition of special cases.**—Section 327 of the Act provides that in the following cases the tax shall be determined as provided in Section 328:

(*a*) Where the Commissioner is unable to determine the invested capital as provided in Section 326;

(*b*) In the case of a foreign corporation;

(*c*) Where a mixed aggregate of tangible property and intangible property has been paid in for stock or for stock and bonds and the Commissioner is unable satisfactorily to determine the respective values of the several classes of property at the time of payment, or to distinguish the classes of property paid in for stock and for bonds, respectively;

(*d*) Where, upon application by the corporation, the Commissioner finds and declares of record that the tax if determined without benefit of this section would, owing to abnormal conditions affecting the capital or income of the corporation, work upon the corporation an exceptional hardship evidenced by gross disproportion between the tax computed without benefit of this section and the tax computed by reference to the representative corporations specified in Section 328. This subdivision shall not apply to any case (1) in which the tax (computed without benefit of this section) is high merely because the corporation earned within the taxable year a high rate of profits upon a normal invested capital nor (2) in which 50 per centum or more of the gross income of the corporation for the taxable year (computed under Section 233 of Title II) consists of gains, profits, commissions, or other income derived on a cost-plus basis from a Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive.

9. **Treatment of special cases.**—In the cases specified in Section 327 the tax will be specially determined under the provisions of Section 328, but the tax will not ordinarily be computed under Section 328 merely because the corporation's form or manner of organization, or the limitations imposed by Section 326, result in a greater tax than would otherwise be payable. A corporation which comes within the provisions of subdivision (*d*) of Section 327 (paragraph 8, above) may make application for assessment under the provisions of Section 328, which application shall be attached to its return in the form of a statement setting forth in full: (*a*) The reasons why the tax should be so determined; (*b*) the facts upon which such reasons are based; (*c*) an exact description of each trade or business or important branch of a trade or business carried on by it; (*d*) a statement of the invested capital and net income for each year since the beginning of the prewar period; and (*e*) a statement showing the amount of gains, profits, commissions, or other income derived on a cost-plus basis from Government contracts made after April 5, 1917, and before November 12, 1918, and showing the per cent which such income is of the total income of the corporation (See Article 901.)

10. **Determination of first installment of tax in special cases.**—In the case of any corporation, other than a foreign corporation where absolutely no data are available for the determination of the invested capital for the taxable year, the installments of the tax shall, in the first instance, be computed and the first installment paid upon the basis of a war and excess-profits tax equal to 50 per cent of the net income, plus income tax, which latter tax shall be computed on the basis of a credit to net income of this amount for war and excess-profits tax. In the case of a foreign corporation the installments of the tax shall, in the first instance, be determined upon the basis prescribed in Article 913 of Regulations 45. In any other case under Section 328, including a case where the invested capital for the taxable year can not be accurately determined, but where a minimum amount of invested capital as to which there is no question can be determined, the installments shall in the first instance be computed and the first installment paid upon the basis of a tax upon the minimum amount of invested capital, not, however, exceeding a tax upon the basis of 50 per cent of the net income. In any of the above cases the actual ratio when ascertained by the Commissioner will be used in determining the correct amount of the tax. (See Article 912 of Regulations 45.)

11. **Returns in special cases.** Corporations other than foreign corporations making claim for assessment under Section 328 of the Act should answer all questions and file all schedules as far as possible and attach a statement explaining why it is impracticable to fill out the entire return.

UNDISTRIBUTED PROFITS TAXABLE TO STOCKHOLDERS.

12. If any corporation, however created or organized, is formed or availed of for the purpose of preventing the imposition of the surtax upon its stockholders or members through the medium of permitting its gains or profits to accumulate instead of being divided or distributed, such corporation shall not be subject to the tax imposed by Section 230 of the Revenue Act of 1918, but the stockholders or members thereof shall be subject to taxation under Title 2 in the same manner as in the case of stockholders of a personal service corporation, except that the tax imposed by Title 3 of the Revenue Act of 1918 shall be deducted from the net income of the corporation before the proportionate share of each stockholder or member is computed. (Section 220, Article 251.)

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GENERAL INSTRUCTIONS

1. For complete instructions concerning the filling in of the schedules in this return, read the explanatory notes at the head thereof, and Part II of Regulations 45, revised, relating to the income tax and war-profits and excess-profits tax on corporations. Copies of the regulations can be obtained from any collector of internal revenue or any bank.

RETURNS.

LIABILITY FOR FILING.

2. **Corporations generally.**—Every corporation, joint-stock company, association, and insurance company not specifically exempted by Section 231 of the revenue act of 1918, and having a net income for the taxable year of $3,000 or more, is subject to the war-profits and excess-profits tax and must file a complete return on this form.

3. A corporation, joint-stock company, association, or insurance company (not exempted by Section 231) having a net income less than $3,000 must also file a return on this form, filling that part of Schedule IV under the headings "Income tax" and (if necessary) "Adjustment of tax for fiscal year ended in 1918," and all the schedules called for on pages 2 and 3; and answering all questions on page 6.

4. **Foreign corporations.**—A foreign corporation subject to the law is required to make return to the collector in whose district is located its principal office or agency through which is transacted the business in the United States. The gross income to be returned includes only the gross income from sources within the United States, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and all amounts received representing profits on the manufacture and disposition of goods within the United States. (See Articles 91, 92, 550, and 625 of Regulations 45.)

5. A foreign corporation should fill in and submit all the schedules called for on pages 2 and 3 of the return with respect to its income from sources within the United States, and should compute its income tax (Schedule IV), claiming, however, no specific exemption (Item 19). Its war-profits and excess-profits tax should be computed in the first instance, as provided in Article 913.

6. **Partnerships and personal service corporations.**—Partnerships and personal service corporations must make a return on Form 1065 A. (See Article 624 of Regulations 45.)

CONSOLIDATED RETURNS.

7. Affiliated corporations, as defined in Section 240 of the Act and Articles 632 and 633 of the Regulations, must file a consolidated return. As provided in Article 632, the parent or principal reporting company must file the consolidated return on this form with the collector of the district in which its principal office is located. All supplementary and supporting schedules should be prepared in columnar form, one column being provided for each corporation included in the consolidation, so that the composition of consolidated net income and consolidated invested capital may be readily examined.

8. Subsidiary corporations and other affiliated corporations whose net income and invested capital are included in the return of a parent corporation or a principal reporting corporation must fill in and file Form 1122 with the collector in whose district their principal office is located.

PERIOD COVERED.

9. The taxable year is the fiscal period ended in the calendar year 1919.

10. A corporation desiring to change the period for which its return is made from a calendar year to a fiscal year or vice versa, or from one fiscal year to another, must give written notice to the collector of such change and the reasons therefor at least 30 days before the due date of its return on the basis of its existing taxable year and at least 30 days before the due date of the return on the basis of the proposed taxable year. (See Articles 26 and 431 of Regulations 45 and Section 226 of the revenue act of 1918.)

TIME AND PLACE FOR FILING.

11. Returns for a fiscal period ending in 1919 must be sent to the collector of internal revenue for the district in which the corporation's principal office is located so as to reach the collector's office on or before the fifteenth day of the third month following the close of the fiscal period, unless an extension of time has been granted.

12. If the fiscal year ended prior to April 1, 1919, and if it is not possible to file a completed return on this form on or before the date the return would be due, an extension of time may be obtained by filing, on or before such date, a tentative return and estimate of taxes assessable, in duplicate, on Form 1031 T, and remitting with such return at least one-fourth of the estimated taxes shown thereon.

13. In case of neglect to file either a completed return or a tentative return within the prescribed time the collector is authorized to grant an extension of not more than 30 days, *provided such neglect was due to absence or sickness*, and provided an application for such extension is made in writing prior to the expiration of the period for which an extension may be granted. In meritorious cases the Commissioner is authorized to grant a further extension; but no such further extension will be granted (except on account of absence or sickness), unless a tentative return has been filed on Form 1031 T and at least one-fourth of the estimated tax has been paid. (See Articles 442 to 444 of Regulations 45.)

SIGNATURES AND VERIFICATION.

14. Returns must be sworn to by the president, vice president, or other principal officer and by the treasurer, assistant treasurer, or other principal fiscal officer. The return of a foreign corporation having an agent in the United States shall be sworn to by such agent. If receivers, trustees in bankruptcy, or assignees are operating the property or business of the corporation, such receivers, trustees, or assignees shall execute the returns for such corporations, under oath.

PAYMENT OF TAXES.

15. The tax should be paid by sending or bringing with the return a check or money order drawn to the order of "Collector of Internal Revenue at [insert name of city and State]."

16. Do not send cash through the mail or pay it in person except at the office of the collector or a regularly established internal-revenue stamp office.

17. At least one-fourth of the tax is due at the same time that the return is due.

18. An additional amount sufficient to bring the total payments up to one-half of the tax must be paid on or before the fifteenth day of the third month after the time fixed by law for filing the return.

19. An additional amount sufficient to bring the total payments up to three-fourths of the tax must be paid on or before the fifteenth day of the sixth month after the time fixed by law for filing the return.

20. The remainder of the tax must be paid on or before the fifteenth day of the ninth month after the time fixed by law for filing the return.

21. If any payment is not made when due, the unpaid balance of the tax will become due 10 days after demand therefor by the collector.

22. If you pay in cash, do not fail to get a receipt at the time of payment. If you pay by check or money order, your canceled check or your money-order receipt will serve as a receipt.

PENALTIES.

UNDERSTATEMENT OF TAXES DUE TO NEGLIGENCE OR FRAUD.

23. If taxes are understated through negligence on the part of the taxpayer and without attempt to defraud, there shall be added as part of the tax 5 per cent of the total amount of the deficiency plus interest at the rate of 12 per cent per annum on the amount of the deficiency of each installment from the time the installment was due. If an understatement is false or fraudulent with intent to evade the tax, there shall be added as part of the tax 50 per cent of the amount of the deficiency.

FOR FAILING TO PAY TAX WHEN DUE.

24. If any tax remains unpaid after the date when it is due and for 10 days after notice and demand by the collector there shall be added as part of the tax the sum of 5 per cent of the amount due but unpaid, plus interest at the rate of 12 per cent per annum on such amount from the time it became due.

FOR FAILING TO MAKE RETURN ON TIME.

25. A penalty of not more than $1,000 attaches for failure to file a return or to pay the tax within the time required by law. If the failure is willful or an attempt is made to defeat or evade the tax, the penalty is $10,000 or imprisonment for not more than one year, or both, together with cost of prosecution.

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DELIVER OR SEND THIS RETURN SO AS TO REACH THE COLLECTOR OF INTERNAL REVENUE ON OR BEFORE THE 15TH DAY OF THE THIRD MONTH AFTER THE CLOSE OF THE PERIOD.

IF AN EXTENSION OF TIME FOR FILING THIS RETURN HAS BEEN GRANTED, THE AUTHORIZATION MUST BE ATTACHED TO THIS RETURN.

Form 1065 A—UNITED STATES INTERNAL REVENUE SERVICE

PARTNERSHIP AND PERSONAL SERVICE CORPORATION INCOME TAX RETURN

FOR CALENDAR YEAR 1919

OR

Fiscal Period begun ....., and ended ....., 1919

(Print plainly partnership's or corporation's name and address)

(Date received)

Examined by—

Audited by—

STATE WHETHER PARTNERSHIP OR CORPORATION .....

No tax is assessable on this return. The distributive shares of the net income are to be reported by the individual members of the partnership or personal service corporation, whether such shares have been received or not.

QUESTIONS.

KIND OF BUSINESS.

1. Explain below the nature of the partnership's or corporation's business in sufficient detail to show in which of the following general classes of activities it falls:

(1) Agriculture and related industries, including fishing; (2) mining, quarrying, and related industries; (3) manufacturing; (4) construction; (5) trading; (6) transportation, (7) storage; (8) other services; (9) banking and insurance.

2. If the business falls in any of the classes from 1 to 5, state the special product or products handled; if in class 5, state whether wholesale or retail, or both; if in class 6, state whether rail, water, or other, whether general or local, and the special commodities (if any) transported; if in class 7, state the special commodities stored (if any) or the special kind of storage; if in class 8, state in detail the kind of service rendered; if in class 9, state the branch of banking or insurance engaged in.

3. In all cases state whether the partnership or corporation acts as principal (using its own capital) or as agent or broker (on commission) or as both.

4. A personal service corporation must explain its business in sufficient detail to justify its claim to be classed as such. If the character of the business is different from that carried on during the preceding taxable period, the nature of the change must be explained. Where necessary, the statement should be made on a separate sheet, which should be firmly attached to this return.

(a) Main business .....

(b) Collateral businesses, if any .....

OTHER CONCERNS IN SAME BUSINESS.

5. Attach hereto a list of the names and addresses of five representative concerns in your locality or section of the country engaged in the same kind of business.

ORGANIZATION OR INCORPORATION.

6. Date of organization or incorporation .....

7. If incorporated, under the laws of what State? .....

8. Are you a successor to or were you formed to take over or conduct part of the business of another organization? .....
If so, state name and address of predecessor or other organization, and in the latter case, the financial, managerial, and contractual relationships existing between yourselves and the other organization .....

VALUATIONS OF CAPITAL STOCK.

9. What was the fair value of the total capital stock of the corporation as determined in the last assessment of the capital stock tax (if any)? .....

Date of that assessment .....

BASIS OF VALUING INVENTORIES.

10. State here which of the methods described on page 2 of the Instructions, in the note under the heading "Schedule A2," was used in valuing inventories .....

AFFILIATIONS WITH CORPORATIONS.

(To be answered by every partnership or personal service corporation).

11. Do you own directly or control through closely affiliated interests or by a nominee or nominees over 50 per cent of the outstanding voting capital stock of a corporation or of other corporations? .....

12. Is over 50 per cent of your voting capital stock owned or controlled by another corporation or by two or more corporations that are affiliated? .....

13. Is over 50 per cent of your voting capital stock as well as over 50 per cent of the voting capital stock of another corporation or of other corporations owned or controlled by the same individual or partnership or by the same individuals or partnerships? .....

14. If any of the conditions indicated in 11, 12, or 13 exist, the following requirements must be complied with.

15. If the answer to Question 11 is "Yes," submit a statement showing for each of the corporations over 50 per cent of whose voting stock is owned or controlled by you, either directly or through closely affiliated interests or by a nominee or nominees:

(a) The name and address.
(b) The total par value of the outstanding capital stock at the beginning of the taxable year, and the date and amount of each change therein during the taxable year, classifying the stock as to preferred and common, voting and non-voting.
(c) The total par value of each class of such outstanding capital stock owned or controlled by you at the beginning of the taxable year, or at the date of acquisition if acquired during the taxable year, and the date and amount of each change therein.

16. If the answer to Question 12 is "Yes," state—

(a) The name and address of such corporation or corporations.
(b) The par value and percentage of your stock held by each.
(c) Whether (if your stock is owned by two or more corporations) these corporations are affiliated and reasons for your conclusion.

17. If the answer to Question 13 is "Yes," submit a statement showing—

(a) The names and addresses of such corporations.
(b) The name or names and address or addresses of the owning or controlling interest or interests.
(c) The total par value of the outstanding capital stock of each corporation at the beginning of the taxable year, and the date and amount of each change therein during the taxable year, classifying the stock as to preferred and common, voting and non-voting.
(d) The total par value of the outstanding capital stock of each corporation owned or controlled by each one of the several individuals or partnerships at the beginning of the taxable year, and the date and amount of each change therein during the taxable year.

LIST OF ATTACHED SCHEDULES.

18. Attach a list of schedules accompanying this return, giving for each a brief title and a schedule number. (See opening paragraph on page 2 of Instructions.)

SCHEDULE I.—COMPUTATION OF DISTRIBUTABLE INCOME AND CREDITS.

Enter below, in accordance with paragraphs 10 to 13, page 1 of Instructions, the income and credits to be accounted for by members of a partnership or shareholders of a personal service corporation filing a return for the calendar year 1919 or for a fiscal period ended in the calendar year 1919.

1.	2. Cash dividends.	3. Stock dividends.	4. Interest on Liberty Bonds, etc., issued since September 24, 1917.	5. Other income.	6. Income, war-profits, and excess-profits taxes paid or accrued to a possession of the U. S. or to a foreign country.
(a) Net income and credits for calendar or fiscal year	$.....	$.....	$.....	$.....	$.....
(b) Portion assignable to 1919					
(c) Portion assignable to 1918					
(d) Portion assignable to 1913–1917	x x x x x x x		x x x x x x x	x x x x x x x	x x x x x x x

SCHEDULE II.—MEMBERS' SHARES OF INCOME, ETC.

Enter below the name and address of each member of the partnership or shareholder of the personal service corporation and show the share of each in the income of the partnership or personal service corporation (whether received or not) and his share of any income, war-profits, and excess-profits taxes paid by the partnership or corporation to a possession of the United States or to a foreign country (See page 1 of Instructions, paragraphs 14 and 15.)

Members of partnership or shareholders of personal service corporation.			2. Cash dividends.	3. Stock dividends.	4. Interest on Liberty Bonds, etc., issued since September 24, 1917.	5. Other income.	6. Income, war-profits, and excess-profits taxes paid or accrued to a possession of the U. S. or to a foreign country.
Name and address of each.	Interest in partnership or number of shares held in corporation	Year to which applicable.					
			$.....	$.....	$.....	$.....	$.....
TOTALS			$.....	$.....	$.....	$.....	$.....

The undersigned, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is to the best of his knowledge and belief a true and complete return made in good faith pursuant to the Revenue Act of 1918 and the regulations issued thereunder.

Sworn to and subscribed before me this ..... day of ....., 19.....

Seal of officer making affidavit.

(Official capacity.)

2—2862

President of corporation.
Member of partnership.

Treasurer of corporation

SCHEDULE A—INCOME TO BE ACCOUNTED FOR BY MEMBERS.

GROSS INCOME.			
1. Gross sales, less returns and allowances	$		
2. Less cost of goods sold, exclusive of expenses, repairs, and other items called for separately below (from Schedule A2)		$	
3. Gross income from services or from operations other than trading or manufacturing, less allowances (from Schedule A3)			
4. Interest on obligations of the United States issued since September 24, 1917 (from Schedule A4)			
5. Interest from other sources (not including interest referred to in Schedule B, Item 6) (from Schedule A5)			
6. Rentals			
7. Royalties			
8. Share of net income earned during period by personal service corporations (whether received or not)			
9 Cash dividends on stock of domestic and resident corporations (excluding dividends on stock of personal service corporations declared out of net income earned since December 31, 1917) (from Schedule A9)			
10 Stock dividends on stock of domestic and resident corporations (excluding those of personal service corporations declared out of net income earned since December 31, 1917)			
11. Dividends on stock of foreign corporations (from Schedule A11)			
12. Gross income from all other sources (not including any amount in respect of sales of capital assets or miscellaneous investments—see Item 24, below) (from Schedule A12)			
13. TOTAL OF ITEMS 1 TO 12			$
DEDUCTIONS.			
14. Ordinary and necessary expenses (except amounts reported in Item 2 above or called for separately below, and not including cost or value of capital assets or miscellaneous investments sold during taxable year—see Item 24) (from Schedule A14)	$		
15 Compensation of members (including shareholders of personal service corporation who drew salaries therefrom and salaries, commissions, and other compensation in whatever form paid) (from Schedule A15)			
16. Repairs (including labor, supplies, overhead, and other items properly chargeable to repairs) (from Schedule A16)			
17. Interest (except on indebtedness incurred or continued to purchase or carry obligations or securities, other than obligations of the United States issued after September 24, 1917, the interest on which is wholly exempt from income tax)			
18. Taxes (except Federal income, war-profits, and excess-profits taxes, taxes which are a credit under Section 222 or Section 238, and taxes assessed against local benefits of a kind tending to increase the value of the property assessed)			
19. Debts ascertained to be worthless and charged off within the taxable year			
20. Exhaustion, wear and tear (including obsolescence) (from Schedule A20)			
21 Depletion (if depletion is claimed, the information called for in Form A (revised) of Mines and Minerals Section or Form N of Oil and Gas Section should be submitted). (Copies of these forms can be obtained from the Collector)			
22. TOTAL OF ITEMS 14 TO 21			$
23. DIFFERENCE BETWEEN ITEMS 13 AND 22			$
24. Profit or loss on sales of capital assets and miscellaneous investments (from Schedule A24)	$		
25. Losses sustained during the taxable year and deducted under Section 234 (*a*) (4) of the Act of 1918 (from Schedule A25)			
26. Amortization of War Facilities (from Schedule A26) (Extend in last column net total of items 24, 25, and 26)			
27. TOTAL TO BE ACCOUNTED FOR BY MEMBERS (TOTAL OF OR DIFFERENCE BETWEEN ITEM 23 AND ITEM 26, LAST COLUMN)			$

SCHEDULE B—RECONCILIATION OF NET PROFIT PER BOOKS WITH INCOME SHOWN ON LINE 27, SCHEDULE A.

1. Net profit for year per books, before any adjustments are made therein	$	
2. Unallowable deductions:		
(*a*) Donations, gratuities, and contributions		
(*b*) Income, war-profits, and excess-profits taxes paid or accrued to the United States		
(*c*) Income, war-profits, and excess-profits taxes paid or accrued to a possession of the United States, or to a foreign country		
(*d*) Special improvement taxes		
(*e*) Furniture and fixtures, additions, or betterments treated as expenses on the books		
(*f*) Replacements covered by depreciation		
(*g*) Insurance premiums paid on the life of any partner, officer, or employee for the benefit of the partnership or corporation or the business		
(*h*) Interest on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917) the interest upon which is wholly exempt from income tax		
(*i*) Additions to reserves for bad debts, contingencies, etc. (to be detailed)		
(*j*)		
(*k*)		
(*l*)		
(*m*)		
(*n*) Other unallowable deductions (to be detailed)		
(*o*)		
(*p*)		
3. Partnership's distributive share of net income earned during period by personal service corporations not received or accrued on books		
4. Amount necessary to adjust book profit or loss with the amounts reported in Items 24 and 25, Schedule A (unless entry belongs on line 8)		
5. TOTAL	$	

6. Income not to be accounted for by members:		
(*c*) Interest on obligations of the United States issued before September 24, 1917, and on obligations of its possessions	$	
(*b*) Interest on obligations of States, Territories, and political subdivisions thereof		
(*c*) Interest on Farm Loan Bonds issued under Federal Farm Loan Act		
(*d*) Dividends on stock of personal service corporations from not income earned during the period between January 1, 1918, and the beginning of the taxable year 1919		
(*e*) Dividends received from net earnings accumulated prior to March 1, 1913		
(*f*) Other items of nontaxable income (to be detailed)		
(*g*)		
7 Charges against reserves for bad debts, contingencies, etc. (to be detailed)		
(*a*)		
(*b*)		
8. Amount necessary to adjust book profit or loss with the amounts reported in Items 24 and 25, Schedule A (unless entry belongs on line 4)		
9 Income to be accounted for by members (Item 27, Schedule A)		
10. TOTAL	$	

SCHEDULE C—BALANCE SHEETS.

Attach hereto balance sheets as of the beginning and end of the taxable year (preferably in parallel columns), showing as nearly as practicable the details called for below: (These balance sheets should be prepared from the books and should be in agreement therewith, or any differences should be reconciled.)

ASSETS.

Cash (including cash in bank and on hand, certificates of deposit, etc.).
Trade accounts and notes receivable (before deducting reserves for losses).
Other accounts and notes receivable (to be classified).
Inventories:
Raw materials.
Work in progress.
Finished products.
Supplies.
Investments:
U. S. bonds and obligations (each issue to be stated separately).
Stock of corporations—
Foreign.
Domestic.
Bonds—
Exempt (municipal, State, etc.).
Other.
Loans and advances:
To members and employees.
To others.

ASSETS (Continued).

Deferred charges to future operations.
Fixed assets:
Land.
Buildings.
Machinery.
Tools and minor equipment.
Delivery equipment.
Office furniture.
Other (state character).
TOTAL.
Less reserve for depreciation.
NET VALUE.
Patents, good will, and other intangible assets:
Paid for in cash or other tangible property.
Paid for in stock (other than stock dividends) or in shares of a partnership.
Created by stock dividend or otherwise.
Discounts:
On bonds.
On stock.
TOTAL.

LIABILITIES.

Notes payable:
To members.
To others (including bank loans).
Accounts payable:
Trade.
Other.
Accrued expenses and reserves, the charges creating which are allowable deductions from income (to be detailed).
Reserve for losses on notes and accounts receivable.
Reserves for contingencies, etc., the charges creating which are not allowable deductions from income (to be detailed).
Capital stock outstanding (to be classified) or all partners' capital and current accounts (to be detailed).
Surplus and undivided profits.
TOTAL.

SCHEDULE D—ANALYSIS OF SURPLUS OR PARTNERSHIP NET WORTH ACCOUNTS.

Attach hereto an analysis of the surplus or partnership net worth accounts, showing the details of all changes therein during the taxable year, as nearly as practicable in the following form:

1. Surplus or partnership net worth at beginning of year per books.
Add: 2. Total net profit per books and per Schedule B (Item 1).
3. Other credits (to be detailed).
4. Total of Items 1, 2, and 3.

Deduct: 5. Withdrawals or dividends (state date dividends payable, amount of each, and whether in cash or in stock).
6. Other debits (to be detailed).
7. Surplus or partnership net worth at end of year per books.

GENERAL INSTRUCTIONS.

References to Regulations 45 are to revised edition.

PARTNERSHIPS AND PERSONAL SERVICE CORPORATIONS REQUIRED TO MAKE A RETURN OF INCOME.

1. *Partnerships.*—Every domestic partnership and every foreign partnership doing business in the United States must make a return of income on this form regardless of the amount of its gross or net income. (See Regulations 45, Articles 321, 1503, 1505–1507 and 1509.)

2. *Personal service corporations.*—Every personal service corporation, as defined below, must make a return of income on this form regardless of the amount of its gross or net income. (See Article 624 of Regulations 45.)

3. *Personal service corporation defined.*—The term "personal service corporation" means a corporation, not expressly excluded, the income of which is derived from a profession or business (*a*) which consists principally of rendering personal service, (*b*) the earnings of which are to be ascribed primarily to the activities of the principal owners or stockholders (who are referred to in this return as "*members*"), and (*c*) in which the employment of capital is not necessary or is only incidental. No definite and conclusive tests can be prescribed by which it can be finally determined in advance of an examination of the corporation's return whether or not it is a personal service corporation. The general principles under which such determination will be made are laid down in Articles 1523 to 1532 of Regulations 45.

4. *Corporations excluded.*—The following classes of corporations are expressly excluded from classification as personal service corporations: (*a*) foreign corporations; (*b*) corporations 50 per cent or more of whose gross income consists of gains, profits, or income derived from trading as a principal; and (*c*) corporations 50 per cent or more of whose gross income consists of gains, profits, commissions, or other income derived from a Government contract or contracts made between April 6, 1917, and November 11, 1918, inclusive.

5. *More than one business.*—A corporation engaged in two or more professions or businesses which are more or less related, one of which does not consist of rendering personal service, is not a personal service corporation unless the nonpersonal service element is negligible or merely incidental and no appreciable part of its earnings are to be ascribed to such sources. (See also Section 305 of the Act.)

6. *Activities of stockholders.*—In determining whether a corporation is a personal service corporation, no weight can be given to the fact that it renders personal services unless (*a*) the principal owners or stockholders are regularly engaged in the active conduct of its affairs and are engaged in such a manner that the earnings are to be ascribed primarily to their activities, and (*b*) its affairs are conducted principally by such owners or stockholders. If employees contribute substantially to the services rendered by a corporation, it is not a personal service corporation unless in every case in which services are so rendered the value of and the compensation charged for such services are to be attributed primarily to the experience or skill of the principal owners or stockholders.

7. *Stock interest of active members.*—No corporation or its owners or stockholders shall make a return in the first instance on the basis of its being a personal service corporation unless at least 86 per cent of its stock is held by those regularly engaged in the active conduct of its affairs.

8. *Capital.*—In determining whether a corporation is a personal service corporation, no weight can be given to the fact that the invested capital of the corporation, under Title III of the Act or the actual investment of the principal owners or stockholders is comparatively small. If the use of capital is necessary or more than incidental, capital is a material income-producing factor and the corporation is not a personal service corporation.

AFFILIATION OF PERSONAL SERVICE CORPORATIONS.

9. In order to come under the provisions of Section 218 (*e*) of the Act, and the Regulations relating thereto, a personal service corporation must normally be owned by individuals. Ordinarily affiliation of a so-called personal service corporation with another corporation (not itself a personal service corporation) sets up a presumption that such personal service corporation is merely a department or unit of another business organization. The income of such a corporation shall be included with the income of the corporation or corporations with which it is affiliated. A corporation can not be treated as a personal service corporation if it is (*a*) in effect merely the selling agency of another corporation or other corporations, (*b*) used for the purpose of performing any part of the service incident to the business of an affiliated corporation principally engaged in trade, or in contracting or manufacturing, or (*c*) a mere instrumentality which is enabled to do business without capital only because it is financially supported by affiliated corporations or affiliated stockholders.

INSTRUCTIONS FOR FILLING IN SCHEDULE I, PAGE 1.

10. *All returns.*—On line (*a*) enter in column 2 the amount of item 9, Schedule A; in column 3, the amount of Item 10, Schedule A; in column 4, the amount of Item 4, Schedule A; in column 5, the amount of Item 27, Schedule A, less the total of Items 4, 9, and 10 of that Schedule; in column 6, the amount of Item 2 (*c*), Schedule B. If the computation of the amount to be entered in column 5 results in a loss, the amount should be indicated by red ink or otherwise.

11. *Returns for calendar year 1919.*—On line (*b*), columns 2, 4, 5, and 6, enter the same amounts as shown in the corresponding columns on line (*a*). Enter in columns 3, line (*b*), the amount of stock dividends which were declared after November 1, 1918, or received after March 26, 1919. Enter on line (*c*) such part of the remainder of stock dividends as were declared out of 1918 earnings, and on line (*d*) any stock dividends not entered upon lines (*b*) and (*c*).

12. *Returns for fiscal year ending in 1919.*—On line (*b*) enter in columns 2, 4, 5, and 6 as many twelfths of the amounts entered in the same columns on line (*a*) as the number of months of the fiscal year that fell in the calendar year 1919. On line (*c*) enter in columns 2, 4, 5, and 6 as many twelfths of the amounts entered in the same columns on line (*a*) as the number of months of the fiscal year that fell in the calendar year 1918.

13. On line (*b*), column 3, enter as many twelfths of the stock dividends which were declared after November 1, 1918, or received after March 26, 1919, as the number of months of the fiscal year that fell in the calendar year 1919. On line (*c*), column 3, enter the remainder of the stock dividends which were declared after November 1, 1918, or received after March 26, 1919, plus any other stock dividends declared out of 1918 earnings. Enter on line (*d*), column 3, any stock dividends not entered on lines (*b*) and (*c*).

INSTRUCTIONS FOR FILLING IN SCHEDULE II, PAGE 1.

14. This Schedule is to be used for showing the share of each partner or member in the income of the partnership or personal service corporation, whether received or not. Where the ownership of a personal service corporation has changed during the taxable year, the distributed portion of the net income is taxable to the recipients, while the undistributed portion is taxable to the owners as at the end of the taxable year. (See Articles 330 to 335, Regulations 45.)

15. The distributive shares of the amounts shown on line (*b*) of Schedule I are taxable upon the returns of the individual members at 1919 rates, those on line (*c*) at 1918 rates, and those on line (*d*) at rates from 1913 to 1917, inclusive. The shares of each member should be entered according to the years to which applicable, such years being entered in column 1. If the amount of column 5, Schedule I, shows a loss, enter the distributive shares of such loss chargeable to each member in the same manner as though a net gain had been realized.

16. If the space provided in Schedule II is insufficient in which to make the necessary entries, attach a supplemental table in the same form as Schedule II.

CREDIT FOR INCOME, WAR-PROFITS, AND EXCESS PROFITS TAXES PAID OR ACCRUED TO A FOREIGN COUNTRY OR TO A POSSESSION OF THE UNITED STATES.

17. If a credit is claimed in column 6 of Schedules I and II, a copy of Form 1118, completely filled out and sworn to or affirmed, must be submitted with this return. If credit is sought for taxes already paid, the form must have attached to it the receipt for each such tax payment. If credit is sought for taxes accrued, the form must have attached to it the return on which each such accrued tax was based. (See Article 611 of Regulations 45.)

18. When a credit is claimed for accrued taxes, the Commissioner may, as a condition precedent to the allowance of this credit, require the taxpayer to give a bond (Form 1119), with sureties satisfactory to and to be approved by him, in such penal sum as he may require, conditioned for the payment by the taxpayer of any amount of taxes found due if the taxes when paid differ from the amount claimed in respect thereof.

PERIOD COVERED.

19. The taxable year is the calendar year 1919 or (if the partnership or corporation makes its return for a fiscal period of 12 months ending on the last day of some month other than December) the fiscal period ended in the calendar year 1919.

20. A partnership or corporation desiring to change the period for which its return is made from a calendar year to a fiscal year or vice versa, or from one fiscal year to another, must give written notice to the Collector of such change and the reasons therefor at least 30 days before the due date of its return on the basis of its existing taxable year and at least 30 days before the due date of the return on the basis of the proposed taxable year. (See Articles 26, 322–324, 411, and 431 of Regulations 45, and Section 226 of the Revenue Act of 1918.)

TIME AND PLACE FOR FILING.

21. Returns must be sent to the Collector of Internal Revenue for the district in which the partnership's or corporation's principal place of business is located, so as to reach the Collector's office on or before the 15th day of the third month following the close of the taxable year, unless an extension of time has been granted.

SIGNATURES AND VERIFICATION.

22. Returns of partnerships must be sworn to by a member of the partnership. Corporation returns must be sworn to by the president, vice president, or other principal officer and by the treasurer or assistant treasurer of the corporation. If receivers, trustees in bankruptcy, or assignees are operating the property or business of the partnership or corporation, such receivers, trustees, or assignees shall execute the return under oath.

PENALTY FOR FAILURE TO FILE RETURN ON TIME.

23. A penalty of not more than $1,000 attaches for failure to file a return within the time required by law. If the failure is willful or an attempt is made to defeat or evade the tax, the penalty is $10,000 or imprisonment for not more than one year, or both, together with costs of prosecution.

9—4009

SCHEDULES SUPPORTING SCHEDULE A.

The schedules called for below should be prepared and firmly stapled to this return. Designate each schedule with the number of the item in Schedule A which it explains. Make schedules on paper of uniform size so far as practicable. Attach a list of schedules accompanying this return, giving for each a brief title and schedule number References to Regulations 45 are to revised edition.

SCHEDULE A2: COST OF GOODS SOLD, EXCLUSIVE OF EXPENSES, REPAIRS, AND OTHER ITEMS CALLED FOR SEPARATELY.

In support of Item 2. Schedule A, partnerships or corporations engaged in manufacturing or trading operations should submit an analysis, in reasonable detail, of the cost of goods sold. This statement should ordinarily include the following items but should not include any expense items called for separately in Schedule A.

1 Inventories at beginning of period (to be reconciled with balance sheet).

2. Purchases during period.

3. Labor and wages ordinarily charged to manufacturing cost on the partnership's or corporation's books, showing the principal items separately

4. Other expenses ordinarily charged to manufacturing cost on the partnership's or corporation's books. (State separately large or unusual items.)

5. TOTAL.

Deduct:

6 Inventories at close of period (to be reconciled with balance sheet)

7 Cost of goods sold (Item 5 less Item 6)

NOTE.—Inventories should be valued at (*a*) cost or (*b*) cost or market, whichever is lower. Whichever basis is adopted must be applied to each item of the inventory Inventories should be recorded in a legible manner, properly computed and summarized, and should be preserved as a part of the accounting records of the taxpayer. If claims for losses on inventories or rebates on sales have been allowed to the individual members for the taxable year 1918, the opening inventory must be reduced by the amount of the claims allowed. (See Articles 266 and 1581 to 1585 of Regulations 45.)

SCHEDULE A3: GROSS INCOME FROM SERVICES, AND OPERATIONS OTHER THAN TRADING OR MANUFACTURING, LESS ALLOWANCES.

Submit a schedule showing the nature and amount of the principal items included in Item 3 Schedule A

SCHEDULE A4: INTEREST ON OBLIGATIONS OF UNITED STATES ISSUED SINCE SEPTEMBER 24, 1917.

Information regarding the amount of the partnership's or corporation's holdings of obligations of the United States issued since September 24, 1917, and the interest received thereon, must be furnished in sufficient detail to enable the members of the partnership or personal service corporation to report correctly the amounts on their individual returns.

Submit a schedule, showing in separate columns the following information with respect to each class of obligations of the United States issued since September 24, 1917.

1. Description of obligations.

2. First and last dates of each period during which the holdings of each class of obligations remained unchanged.

3. Amount of obligations of each class held during each such period.

4. Rate of interest.

5. Interest derived from each amount of principal stated in column 3.

Enter as Item 4, Schedule A, the total of column 5 for all classes of obligations.

Submit also a statement in similar form to the above, with regard to bonds and other obligations not subject to income tax. (See Section 213 (*b*) (4) of the Act of 1918).

SCHEDULE A5: INTEREST FROM OTHER SOURCES (not including interest referred to in Schedule B, Item 6).

Submit a schedule showing the source, nature, and amount of the principal items included herein, the minor items being grouped in one figure. The total of the schedule should be entered as Item 5, Schedule A.

For interest on foreign bonds show (*a*) name of country; (*b*) kind of obligations (whether national, State, municipal, or corporate obligations); (*c*) amount of principal; and (*d*) amount of interest.

SCHEDULE A9: CASH DIVIDENDS ON STOCK OF DOMESTIC AND RESIDENT CORPORATIONS.

Submit a schedule showing (*a*) name of corporation; (*b*) State in which organized; (*c*) total par value of stock held; and (*d*) amount of dividends.

SCHEDULE A11: DIVIDENDS ON STOCK OF FOREIGN CORPORATIONS.

Submit a schedule showing (*a*) name of corporation; (*b*) country in which organized; (*c*) total par value of stock held; and (*d*) amount of dividends

SCHEDULE A12: GROSS INCOME FROM ALL OTHER SOURCES (not including any amount in respect of sales of capital assets or miscellaneous investments).

Submit a schedule showing the source, nature, and amount of the principal items included herein, the minor items being grouped in one figure. The total of the schedule should be entered as Item 12, Schedule A.

SCHEDULE A14: ORDINARY AND NECESSARY EXPENSES (except amounts called for separately in Schedule A and not including cost or value of capital assets or miscellaneous investments sold during taxable year).

Submit a statement showing character and amount of the principal items included in Item 14, Schedule A.

SCHEDULE A15: COMPENSATION OF MEMBERS OF THE PARTNERSHIP OR CORPORATION.

Submit a schedule showing for each member of the partnership or for each shareholder who drew a salary from the corporation or was engaged in its business, (1) name, (2) duties, (3) time devoted to such duties, and (4) total annual compensation. A personal service corporation should also explain fully the manner and degree in which the earnings of the corporation are dependent on the activities of the active shareholders or "members."

SCHEDULE A16: REPAIRS (including labor, supplies, overhead, and other items properly chargeable to repairs).

Submit a schedule showing the nature and amount of the principal items included in Item 16, Schedule A.

Incidental repairs, which do not add to the value or appreciably prolong the life of property, are deductible as expenses. Expenditures for new buildings or for permanent improvements or betterments which increase the value of the property are chargeable to capital account. Expenditures for restoring or replacing property are not deductible under this or any other item of the return. Such expenditures are chargeable to capital account or to depreciation reserves, depending on the treatment of depreciation on the books of the taxpayer

SCHEDULE A20: EXHAUSTION, WEAR AND TEAR (including obsolescence).

Submit a columnar schedule containing in the most practicable form substantially the following information:

1 A classification of depreciable assets subdivided on the bases of (*a*) character, and (*b*) term of useful life.

2. The year of acquisition of such assets if prior to tax year. If acquired during tax year, give actual date.

3. Nature and amount of consideration given in payment.

4. The fair market value of such assets March 1, 1913, if acquired before that date.

5. The estimated life or term of reasonable usefulness of such assets from date acquired or from March 1, 1913, if acquired prior thereto. Give reasons for your conclusions.

6. For each class of assets state:

(*a*) The total provision for depreciation made on the books of the corporation from date of acquisition to the beginning of the taxable year.

(*b*) The total amount of depreciation (exhaustion, wear and tear, including obsolescence) claimed for the taxable year.

7 A reconciliation of all figures in this schedule with corresponding figures reflected in the balance sheets.

8. If any plan of depreciation other than the "straight line" method contemplated by the above instructions is used, a full explanation thereof with justification should be given.

SCHEDULES A24 and A25: PROFIT OR LOSS ON SALES OF CAPITAL ASSETS and miscellaneous investments, and LOSSES sustained during the taxable year from fire, storm, or other casualty, or from theft, not compensated for by insurance or otherwise.

Submit a columnar schedule setting forth for each sale of capital assets or of miscellaneous investments and for each loss during the taxable year the information called for below:

1. Description of property sold or of property in respect of which a loss is claimed.
2. Date acquired.
3. Fair market price or value on March 1, 1913, if acquired before that date, or cost if acquired after February 28, 1913.
4. Cost of improvements, if any, since February 28, 1913, or since date of acquisition, if acquired after February 28, 1913.
5. Total of Items 3 and 4.

Less—

6. Depreciation or depletion of property subject thereto—

(*a*) Per books.

(*b*) Accrued but not on books.

7. Salvage value, if any, of property on which a loss is claimed.
8. Amount of insurance or other recovery on property, if any.
9. Proceeds of sale or cash value of property received in exchange (for transactions falling in Item 24, Schedule A) (see Note).
10. Total of Items 6 to 9, inclusive.
11. Profit or loss.
12. Cause of loss (for losses falling in Item 25, Schedule A).

NOTE.—Submit evidence substantiating the basis used by you in arriving at the cash value of property received in exchange for other property.

SCHEDULE A26: AMORTIZATION OF WAR FACILITIES.

If a claim for amortization is made, the amortization allowance should be spread in accordance with the profits of the business over the entire amortization period in monthly estimates, and there should be entered as the amortization deduction in this return the aggregate amounts assigned to those months of the amortization period which are included in the taxable year. If the return is made for a fiscal year ending in 1919, Article 188 of Regulations 45 should be interpreted as above set forth. The information called for in Article 188, Regulations 45, should also be submitted.

CAPITAL EMPLOYED IN BUSINESS.

If the balance sheet (Schedule C) of a personal service corporation indicates that a substantial amount of capital (invested or borrowed) is employed in the business, submit a statement explaining why the employment of such capital is incidental and not necessary.

WORKING PAPERS.

Every partnership or corporation should preserve, available for inspection by a revenue officer, working papers showing—

1. The balance in each account on the partnership's or corporation's books that was used in preparing Schedule A.
2. The amount deducted from each such balance on account of each class of non-taxable income, unallowable deductions, and other adjustments indicated in Schedule B, with a reference to the number of the item in Schedule B in which each amount so deducted was included.
3. The remainder of each such balance, analyzed to show the amount included in each item of Schedule A, with a reference to the number of the item in Schedule A in which each such amount was included.

1—1919

Form 1087. Revised April, 1919.

TREASURY DEPARTMENT, INTERNAL REVENUE—INCOME TAX.

Ed. 200,000—F. C., Apr. 21-19.

Ownership Certificate—DISCLOSING ACTUAL OWNER OF STOCK.

(For use of Foreign Principal to disclose actual ownership of stock of domestic corporation registered in name of representative in United States.)

RECORD OWNER.	ACTUAL OWNER.
NAME	NAME .....
ADDRESS	ADDRESS .....

Number of shares stock owned ..... Class of stock (common, preferred, etc.) .....

.....
(Issuing corporation.)

.....
(Address.)

I (we) hereby declare that I am (we are) the actual owner of the above-described stock or that the record owner of said stock holds it for my (our) account and the actual owner is as stated above; that I am (we are) or the actual owner is (are) nonresident alien as to the United States; that the record owner of said stock is correctly listed above and that said record owner is the representative in the United States of the undersigned with respect to said stock; and that all the information given herein is true and correct.

Date, ..., 19.....

.....
(Signature of actual owner or representative.)

.....
(Full post-office address of actual owner or representative.)

By .....
(If organization, signature of official authorized to sign and official position.)

2—676

TREASURY DEPARTMENT
INTERNAL REVENUE BUREAU
Form 1117

INCOME AND PROFITS TAX BOND

UNDER SECTION 222 (b) OF THE REVENUE ACT OF 1918

KNOW ALL MEN BY THESE PRESENTS, That we, ...

of ....., as principal, and .....

....., of .....

as surety, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of.....

..... Dollars, lawful money of the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, at the time of filing his return of income for the taxable year 1918, the above-bounden principal claimed a credit on his income tax return for taxes accrued but not paid to foreign countries or to possessions of the United States, and duly attached thereto Form 1116 prescribed for such purpose; and

WHEREAS, Section 222 (b) of the Revenue Act of 1918 provides that in the case of such a tax accrued but not paid, the Commissioner, as a condition precedent to the allowance of the credit, may require the taxpayer to give bond, with satisfactory sureties, in such penal sum as the Commissioner may require, conditioned upon the payment by the taxpayer of any amount found to be due, and the amount of this bond is equivalent to the amount of the credit claimed, which is in accordance with the Commissioner's requirements:

NOW, THEREFORE, the condition of the foregoing obligation is such that if the principal shall, on notice and demand by the Collector, duly pay any income, war profits, or excess profits tax found by the Commissioner to be due from the principal, under the Revenue Act of 1918, and shall otherwise well and truly perform and observe all of the provisions of law and the regulations, then this obligation is to be void, but otherwise to remain in full force and virtue.

WITNESS our hands and seals, this ..... day of ....., 1919.

Signed, sealed, and delivered in the presence of—

.....[L. S.]

.....

.....[L. S.]
Principal.

.....

.....[L. S.]
Surety.

BOND APPROVED this ..... day of ....., 1919.

.....
Commissioner of Internal Revenue.

7—9084

Form 1118—United States Internal Revenue Service.

CLAIM FOR CREDIT ON INCOME AND PROFITS TAX RETURN OF DOMESTIC CORPORATION FOR TAXES PAID OR ACCRUED TO FOREIGN COUNTRIES OR TO POSSESSIONS OF THE UNITED STATES

Name of corporation ..... Address ..... (Street and number.)

..... (City or town.), ... (State.)

On behalf of the above-named domestic corporation, credit is hereby claimed, on the attached corporation income and profits tax return, which is based on income ..... (Received or accrued.)[1] for the taxable year ..... (If calendar year, give year; if fiscal year, give months.) of the above-named corporation, for taxes ..... (Paid or accrued.) as follows:

Taxes Paid or Accrued[1] During the Taxable Year to Possessions of the United States on Behalf of the Corporation.

Schedule A1.

Name of possession imposing tax ..... Character of tax ..... (Income, war profits, or excess profits.)

Date of accrual ..... Date of payment (if paid) .....

Statute imposing tax ..... (To be named fully and clearly so as to be easily identified.)

1. Amount of tax payment (evidenced by attached receipt or return) .....[2] (In foreign money.) which (converted at an exchange rate of .....[3]) equals in dollars ..... $.....

Taxes Paid or Accrued[1] During the Taxable Year to Possessions of the United States on Behalf of the Corporation.

Schedule A2.

Name of possession imposing tax ..... Character of tax ..... (Income, war profits, or excess profits.)

Date of accrual ..... Date of payment (if paid) .....

Statute imposing tax ..... (To be named fully and clearly so as to be easily identified.)

1. Amount of tax payment (evidenced by attached receipt or return) .....[2] (In foreign money.) which (converted at an exchange rate of .....[3]) equals in dollars ..... $.....

Taxes Paid or Accrued[1] During the Taxable Year to a Foreign Country on Behalf of the Corporation.

Schedule B1.

Name of foreign country imposing tax ..... Character of tax ..... (Income, war profits, or excess profits.)

Date of accrual ..... Date of payment (if paid) .....

Statute imposing tax ..... (To be named fully and clearly so as to be easily identified.)

1. Total net income on which tax was based .....
2. That amount of such total net income which was derived from sources in that foreign country[4] .....
3. Ratio of total net income derived from sources in that foreign country to total net income on which tax was based (item 2 divided by item 1) .....
4. Total amount of this tax payment or accrual to that foreign country (evidenced by attached receipt or return) .....
5. That amount of this tax payment or accrual which was based on income derived from sources in that foreign country (item 3 multiplied by item 4) .....[2] (In foreign money.) which (converted at an exchange rate of .....[3]) equals in dollars ..... $.....

2—9088

See notes on page 3.

Taxes Paid or Accrued[1] During the Taxable Year to a Foreign Country on Behalf of the Corporation.

SCHEDULE B2.

Name of foreign country imposing tax ..... Character of tax .....
(Income, war profits, or excess profits.)

Date of accrual ..... Date of payment (if paid) .....

Statute imposing tax .....
(To be named fully and clearly so as to be easily identified.)

1. Total net income on which tax was based ..... [2]
2. That amount of such total net income which was derived from sources in that foreign country [4] ..... [2]
3. Ratio of total net income derived from sources in that foreign country to total net income on which tax was based (item 2 divided by item 1) .....
4. Total amount of this tax payment or accrual to that foreign country (evidenced by attached receipt or return) ..... [2]
5. That amount of this tax payment or accrual which was based on income derived from sources in that foreign country (item 3 multiplied by item 4) ..... [2] which (converted at an exchange rate of ..... [3]) equals in dollars ..... $.....
(In foreign money.)

Taxes Paid[5] during the Taxable Year to a Foreign Country or a Possession of the United States by a Controlled Foreign Corporation.

SCHEDULE C.

[NOTE.—No credit can be claimed for taxes paid on behalf of a foreign corporation the dividends from which are deductible from gross income under section 234 of the act.]

Foreign Corporation:
- Name ..... Address .....
(Street and number.)
- ....., ...
(City or town.) (Country.)
- Incorporated under the laws of .....
- Capital stock:
  - Number of shares outstanding ..... *Preferred.* ..... *Common.* ..... *Total* .....
  - Number of shares owned by above-named domestic corporation ....
  - Has preferred stock voting rights? .....
(Yes or no.)

Name of foreign country or possession of United States imposing tax ..... Character of tax .....
(Income, war profits, or excess profits.)

Statute imposing tax .....
(To be named fully and clearly so as to be easily identified.)
Date of payment of tax .....

Was any part of the net income on which this tax was based derived from sources within the United States? .....
(Yes or no.)

1. Period of accrual of this tax payment [6]					
2. Amount of this tax payment (evidenced by attached receipt)[7]					Total ..... [2]
3. Net income on which this tax was based [8]					Total ..... [2]

4. Amount received during the taxable year by the above-named domestic corporation as dividends from such foreign corporation ..... [2]
5. Ratio of the amount of such dividends to total net income on which this tax was based (item 4 divided by total items 3) .....
6. That amount of this tax payment which is available for credit on return of above-named domestic corporation (total items 2 multiplied by item 5, unless this product is in excess of total items 2, in which case total items 2 must be entered here instead of such product) ..... [2], which (converted at an exchange rate of ..... [3]) equals in dollars ..... $.....
(In foreign money.)

2—2065

See notes on page 3.

SUMMARY[9] OF CREDITS CLAIMED FOR TAXES PAID OR ACCRUED ON BEHALF OF CORPORATION.

To a possession of the United States (item 1 of Schedule A1) ..... $.....

To a possession of the United States (item 1 of Schedule A2) ..... $.....

To a foreign country (item 5 of Schedule B1) ..... $.....

To a foreign country (item 5 of Schedule B2) ..... $.....

To a foreign country or a possession of the United States on behalf of a controlled foreign corporation (item 6 of Schedule C) ..... $.....

Total credit claimed (to be entered in Schedule IV of atttached corporation return—as item 19 if return is on Form 1120, as item 29 if return is on Form 1120-A) ..... $.....

We, the undersigned, president and treasurer of the corporation for which this claim is made, being severally duly sworn, each for himself deposes and says that this claim has been examined by him and is to the best of his knowledge and belief a true and complete statement of facts in connection with the credit for income, war profits, and excess profits taxes claimed herein.

Sworn to and subscribed before me this .....

day of ....., 19.....

.....
President.

.....
(Official capacity.)

.....
Treasurer.

[1] If attached income tax return is based on income "received", then "paid or accrued" wherever it appears in this form (except in Schedule C) means "paid"; if based on income "accrued," then "paid or accrued" means "accrued" (See section 200 of the Revenue Act of 1918.)

[2] State this item in terms of the currency used in making the return on which this tax was based (e. g., pounds, francs, marks).

[3] Claimant must here state rate of exchange used and must also attach a statement describing in reasonable detail why and how he determined upon this particular rate.

[4] The person making this claim must attach to it a statement describing in reasonable detail the method by which he determined the amount of item 2.

[5] Credit can be claimed for taxes paid on behalf of a foreign-controlled corporation only in the taxable year during which such taxes are paid. There is no such credit for taxes accrued.

[6] Where this tax payment was of taxes accrued during only one year, give dates of beginning and ending of such year in first column (e. g., July 1, 1917—June 30, 1918). Where this tax payment was of taxes accrued during more than one year, give in separate columns the dates of each annual period during which any part of this tax payment accrued.

[7] State in column under each annual period named in item 1 the amount of this tax payment which accrued in such period.

[8] State in column under each part of this tax payment as given in item 2 the amount of the net income upon which such part of the tax payment was based.

[9] Where there are more than two possessions of the United States or foreign countries to which taxes are paid by the domestic corporation, or more than one controlled foreign corporation, or more than one possession of the United States or foreign country to which taxes are paid on behalf of a controlled foreign corporation, additional schedules should be attached, and the credit claimed on each such schedule should be written into this Summary.

2—9055

[Page 3 of Form 1118.]

INSTRUCTIONS REGARDING USE OF FORM 1118

CREDIT FOR TAXES

Provisions of Revenue Act of 1918

SEC. 238. (*a*) That in the case of a domestic corporation the total taxes imposed for the taxable year by this title and by Title III shall be credited with the amount of any income, war-profits and excess-profits taxes paid during the taxable year to any foreign country, upon income derived from sources therein, or to any possession of the United States.

If accrued taxes when paid differ from the amounts claimed as credits by the corporation, or if any tax paid is refunded in whole or in part, the corporation shall at once notify the Commissioner who shall redetermine the amount of the taxes due under this title and under Title III for the year or years affected, and the amount of taxes due upon such redetermination, if any, shall be paid by the corporation upon notice and demand by the collector, or the amount of taxes overpaid, if any, shall be credited or refunded to the corporation in accordance with the provisions of section 252. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the corporation to give a bond with sureties satisfactory to and to be approved by him in such penal sum as he may require, conditioned for the payment by the taxpayer of any amount of taxes found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require.

(*b*) This credit shall be allowed only if the taxpayer furnishes evidence satisfactory to the Commissioner showing the amount of income derived from sources within such foreign country or such possession of the United States, as the case may be, and all other information necessary for the computation of such credit.

(*c*) If a domestic corporation makes a return for a fiscal year beginning in 1917 and ending in 1918, only that proportion of this credit shall be allowed which the part of such period within the calendar year 1918 bears to the entire period.

SEC. 240. (*c*) For the purposes of section 238 a domestic corporation which owns a majority of the voting stock of a foreign corporation shall be deemed to have paid the same proportion of any income, war-profits and excess-profits taxes paid (but not including taxes accrued) by such foreign corporation during the taxable year to any foreign country or to any possession of the United States upon income derived from sources without the United States, which the amount of any dividends (not deductible under section 234) received by such domestic corporation from such foreign corporation during the taxable year bears to the total taxable income of such foreign corporation upon or with respect to which such taxes were paid: *Provided*, That in no such case shall the amount of the credit for such taxes exceed the amount of such dividends (not deductible under section 234) received by such domestic corporation during the taxable year.

CONDITIONS OF ALLOWANCE OF CREDIT.—(*a*) When credit is sought for income, war-profits or excess-profits taxes paid other than to the United States, the income and profits tax return of the corporation must be accompanied by this form, carefully filled out with all the information called for and with the calculations of credits indicated, and duly signed and sworn to. When credit is sought for taxes already paid the form must have attached to it the receipt for each such tax payment. When credit is sought for taxes accrued the form must have attached to it the return on which each such accrued tax was based. This receipt or return so attached must be either the original, a duplicate original, a duly certified or authenticated copy, or a sworn copy. In case only a sworn copy of a receipt or return is attached, there must be kept readily available for comparison on request the original, a duplicate original, or a duly certified or authenticated copy. (*b*) In the case of a credit sought for a tax accrued but not paid, the Commissioner may require as a condition precedent to the allowance of credit a bond from the taxpayer in addition to this form. If such a bond is required, Form 1119 shall be used for it. It shall be in such penal sum as the Commissioner may prescribe, and shall be conditioned for the payment by the taxpayer of any amount of tax found due upon any redetermination of the tax made necessary by such credit proving incorrect, with such further conditions as the Commissioner may require. This bond shall be executed by the taxpayer, its agent or representative, as principal, and by sureties satisfactory to and approved by the Commissioner. See also section 1320 of the Revenue Act of 1918. Articles 611 and 383, Regulations 45.

2—8055

[Page 4 of Form 1118.]

ORIGINAL

For use of Nonresident Aliens as to United States

Form 1040C—UNITED STATES INTERNAL REVENUE SERVICE

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF NOT MORE THAN $5,000

For Taxable Period 1919

PRINT NAME AND ADDRESS PLAINLY BELOW

Name .....

Address .....

Subject of .....

INCOME FOR PRIOR YEARS

YEAR	AMOUNT OF INCOME.	TAX	DISTRICT IN WHICH RETURN WAS FILED
1916	$		
1917			
1918			

INCOME FROM SALARIES, WAGES, COMMISSIONS, BONUSES, ETC., FOR 1919

1. By whom received.	2. Occupation.	3. Name and address of employer.	4. Net income.	5. Tax withheld, if any
			$	$
TOTAL			$	$

CALCULATION OF TAX FOR 1919

Do not write here.				Do not write here.			
	A. Net income	$			D. Tax due (8% on amount of Item C)	$	
	B. Less personal exemption				E. Less tax withheld at source		
	C. Balance (income taxable at 8%)	$			F. Balance of tax due	$	
					G. Amount of tax paid on submission of return	$	

AFFIDAVIT

I swear (or affirm) that this return, to the best of my knowledge and belief, is a true and complete statement of all taxable gains, profits, and income received by or accrued to me (or the person for whom this return is made) during the year 1919, and that all deductions entered or claimed herein are allowable under the law.

.....

(If return is made by agent, the reason therefor must be stated on this line.)

Sworn to and subscribed before me this ..... day of ....., 1919.

.....
(Signature of individual or agent.)

.....
(Signature of officer administering oath.)

.....
(Title.)

.....
(Address of individual or agent.)

This certifies that the above-named person has complied with all tax obligations with respect to income accruing up to the end of the month just preceding the date of this certificate, as disclosed by assessment made by this office, or proof of exemption there furnished.

.....
Collector of Internal Revenue,
..... *District,* .....

2—9034

DETACH RETURN HERE

DUPLICATE

For use of Nonresident Aliens as to United States

Form 1040C—UNITED STATES INTERNAL REVENUE SERVICE

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF NOT MORE THAN $5,000

For Taxable Period 1919

PRINT NAME AND ADDRESS PLAINLY BELOW

Name .....

Address .....

Subject of .....

INCOME FOR PRIOR YEARS

YEAR	AMOUNT OF INCOME.	TAX	DISTRICT IN WHICH RETURN WAS FILED
1916	$		
1917			
1918			

INCOME FROM SALARIES, WAGES, COMMISSIONS, BONUSES, ETC., FOR 1919

1. By whom received.	2. Occupation.	3. Name and address of employer.	4. Net income.		5. Tax withheld, if any.	
			$		$	
TOTAL			$		$	

CALCULATION OF TAX FOR 1919

Do not write here.				Do not write here.			
	A. Net income	$			D. Tax due (8% on amount of Item C)	$	
	B. Less personal exemption				E. Less tax withheld at source		
	C. Balance (income taxable at 8%)	$			F. Balance of tax due	$	
					G. Amount of tax paid on submission of return	$	

AFFIDAVIT

I swear (or affirm) that this return, to the best of my knowledge and belief, is a true and complete statement of all taxable gains, profits, and income received by or accrued to me (or the person for whom this return is made) during the year 1919, and that all deductions entered or claimed herein are allowable under the law.

.....

(If return is made by agent, the reason therefor must be stated on this line.)

Sworn to and subscribed before me this ..... day of ....., 1919. .....

(Signature of individual or agent.)

.....

(Signature of officer administering oath.) (Title.) (Address of individual or agent.)

This certifies that the above-named person has complied with all tax obligations with respect to income accruing up to the end of the month just preceding the date of this certificate, as disclosed by assessment made by this office, or proof of exemption there furnished.

.....

Collector of Internal Revenue,

..... *District,* .....

2—9034

A LIST OF THE SEVERAL

COLLECTION DISTRICTS

WITH THE

NAMES AND ADDRESSES OF COLLECTORS

REORGANIZATION OF JULY 1, 1887

Revised to February 21, 1919.

(Unless otherwise indicated the district bears the name of the State under which the Collector's name is given.)

ALABAMA (Includes Mississippi), JOHN D. McNEEL, Birmingham.

ALASKA (See Washington).

ARIZONA (See New Mexico).

ARKANSAS, JACK WALKER, Little Rock.

CALIFORNIA,

First District.—The counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, Eldorado, Fresno, Glenn, Humboldt, Inyo, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tulare, Tehama, Trinity, Tuolumne, Yolo, Yuba, and the State of Nevada.

JUSTUS S. WARDELL, San Francisco.

Sixth District.—The counties of Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura.

JOHN P. CARTER, Los Angeles.

COLORADO (Including Wyoming), MARK A. SKINNER, Denver.

CONNECTICUT (Includes Rhode Island), JAMES J. WALSH, Hartford.

DELAWARE (See Maryland).

DISTRICT OF COLUMBIA (See Maryland).

FLORIDA, JAMES M. CATHCART, Jacksonville.

GEORGIA, AARON O. BLALOCK, Atlanta.

HAWAII, H. HATHAWAY, Honolulu.

IDAHO (See Montana).

ILLINOIS,

First District.—The counties of Boone, Carroll, Cook, DeKalb, Dupage, Grundy, Jo Daviess, Kane, Kankakee, Kendall, Lake, Lasalle, Lee, McHenry, Ogle, Stephenson, Whiteside, Will, and Winnebago.

JULIUS F. SMIETANKA, Chicago.

Fifth District.—The counties of Bureau, Henderson, Henry, Knox, Marshall, Mercer, Peoria, Putnam, Rock Island, Stark, and Warren.

EDWARD D. McCABE, Peoria.

Eighth District.—The counties of Adams, Bond, Brown, Calhoun, Cass, Champaign, Christian, Coles, Cumberland, Dewitt, Douglas, Edgar, Ford, Fulton, Greene, Hancock Iroquois, Jersey, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Mason, Menard, Montgomery, Morgan, Moultrie, Piatt, Pike, Sangamon, Schuyler, Scott, Shelby, Tazewell, Vermilion, and Woodford.

JOHN L. PICKERING, Springfield.

Thirteenth District.—The counties of Alexander, Clark, Clay, Clinton, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Wabash, Washington, Wayne, White, and Williamson.

JOHN M. RAPP, East St. Louis.

INDIANA,

Sixth District.—The counties of Adams, Allen, Bartholomew, Benton, Blackford, Brown, Cass, Dearborn, Decatur, Dekalb, Delaware, Elkhart, Fayette, Franklin, Fulton, Grant, Hamilton, Hancock, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Johnson, Kosciusko, Lagrange, Lake, Laporte, Lawrence, Madison, Marion, Marshall, Miami, Monroe, Morgan, Newton, Noble, Ohio, Porter, Pulaski, Randolph, Ripley, Rush, St. Joseph, Shelby, Starke, Steuben, Switzerland, Tipton, Union, Wabash, Wayne, Wells, White, and Whitley.

PETER J. KRUYER, Indianapolis.

Prior missing Supplementary Pages reserved for Forms.

INDIANA (Concluded)

Seventh District.—The counties of Boone, Carroll, Clark, Clay, Clinton, Crawford, Daviess, Dubois, Floyd, Fountain, Gibson, Greene, Harrison, Knox, Martin, Montgomery, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Scott, Spencer, Sullivan, Tippecanoe, Vanderburg, Vermilion, Vigo, Warren, Warrick, and Washington.

ISAAC R. STROUSE, Terre Haute

IOWA, LOUIS MURPHY, Dubuque.

This district is officially designated as the Third District of Iowa.

KANSAS, WM. H. L. PEPPERELL, Wichita.

KENTUCKY,

Second District.—The counties of Allen, Ballard, Barren, Breckenridge, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Fulton, Graves, Grayson, Hancock, Hart, Henderson, Hickman, Hopkins, Livingston, Logan, Lyon, McCracken, McLean, Marshall, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, and Webster.

JOSH T. GRIFFITH, Owensboro.

Fifth District.—The city of Louisville and the counties of Adair, Bullitt, Casey, Green, Hardin Henry, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Owen, Shelby, Spencer, Taylor and Washington.

J. ROGERS GORE, (Acting) Louisville.

Sixth District.—The counties of Boone, Bracken, Campbell, Carroll, Gallatin, Grant, Harrison Kenton, Pendleton, Robertson, and Trimble.

CHARLTON B. THOMPSON, Covington.

Seventh District.—The counties of Bath, Bourbon, Boyd, Carter, Clark, Elliott, Fayette, Fleming, Franklin, Greenup, Johnson, Lawrence, Lewis, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Powell, Rowan, Scott, and Woodford

ELWOOD HAMILTON, Lexington.

Eighth District.—The counties of Anderson, Bell, Boyle, Breathitt, Clay, Estill, Floyd, Garrard, Harlan, Jackson, Jessamine, Knott, Knox, Laurel, Lee, Leslie, Letcher, Lincoln, Madison, Magoffin, Mercer, McCreary, Owsley, Perry, Pike, Pulaski, Rockcastle, Wayne, Whitley, and Wolfe.

JOHN W. HUGHES, Danville.

LOUISIANA, JOHN Y. FAUNTLEROY, New Orleans.

MAINE (See New Hampshire).

MARYLAND, JOSHUA W. MILES, Baltimore.

District of Maryland consists of the following-named territory: The States of Maryland and Delaware, the District of Columbia, and the counties of Accomac and Northampton of the State of Virginia.

MASSACHUSETTS, JOHN F. MALLEY, Boston.

This district is officially designated as the Third District of Massachusetts.

MICHIGAN,

First District.—Counties of Alcona, Alpena, Arenac, Bay, Branch, Calhoun, Cheboygan, Clare, Clinton, Crawford, Genessee, Gladwin, Gratiot, Hillsdale, Huron, Ingham, Iosco, Isabella, Jackson, Lapeer, Lenawee, Livingston, -Macomb, Midland, Monroe, Montmorency, Oakland, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, Sanilac, Shiawassee, St. Clair, Tuscola, Washtenaw, and Wayne.

JAMES J. BRADY, Detroit.

Fourth District.—Counties of Alger, Allegan, Antrim, Baraga, Barry, Benzie, Berrien Cass, Charlevoix, Chippewa, Delta, Dickinson, Eaton, Emmet, Gogebic, Grand Traverse, Houghton, Ionia, Iron, Kalamazoo, Kalkaska, Kent, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Muskegon, Newaygo, Oceana, Ontonagon, Osceola, Ottawa, St. Joseph, Schoolcraft, Van Buren, and Wexford.

EMANUEL J. DOYLE, Grand Rapids.

MINNESOTA, EDWARD J. LYNCH, St. Paul.

MISSISSIPPI (See Alabama).

The State of Mississippi detached from the District of Louisiana and added to the District of Alabama June 1, 1908.

MISSOURI,

First District.—The counties of Adair, Audraid, Bollinger, Boone, Butler, Callaway, Cape, Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Howard, Iron, Jefferson, Knox, Lewis, Lincoln, Linn, Macon, Madison, Maries, Marion, Mississippi, Montgomery, Monroe, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Ralls, Randolph, Reynolds, Ripley, St. Charles, St. Francois, Ste. Genevieve, St. Louis, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Warren, Washington, and Wayne.

GEORGE H. MOORE, St. Louis.

Sixth District.—The counties of Andrew, Atchison, Barry, Barton, Bates, Benton, Buchanan, Caldwell, Camden, Carroll, Cass, Cedar, Charlton, Christian, Clay, Clinton, Cole, Cooper, Dade, Dallas, Daviess, Dekalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howell, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Livingston, McDonald, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Ozark, Pettis, Platte, Polk, Putnam, Ray, St. Clair, Saline, Stone, Sullivan, Taney, Texas, Vernon, Webster, Worth, and Wright

GEO. F. CRUTCHLEY, Kansas City.

MONTANA (Includes Utah and Idaho), WILLIAM C. WHALEY, Helena.

NEBRASKA, GEO. L. LOOMIS, Omaha.

NEVADA (See First California).

NEW HAMPSHIRE (Includes Maine and Vermont), SETH W. JONES, Portsmouth.

NEW JERSEY,

First District.—The counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem.

SAMUEL IREDELL, Camden.

Fifth District.—The counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren.

CHARLES V. DUFFY, Newark.

NEW MEXICO (Includes Arizona), ALFRED FRANKLIN, Phoenix, Arizona.

NEW YORK,

First District.—The counties of Kings, Nassau, Queens, Richmond, and Suffolk.

BERTRAM GARDNER, Federal Building, Brooklyn.

Second District.—The old first, second, third, fourth, fifth, sixth, eighth, ninth, and fifteenth wards of New York City; that portion of the old fourteenth ward lying west of the center of Mott Street; that portion of the old sixteenth ward lying south of the center of West Twenty-fourth Street, and Governors Island.

WILLIAM H. EDWARDS, Custom House, New York.

Third District.—The old seventh, tenth, eleventh, twelfth, thirteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first and twenty-second wards of New York City; that part of the old fourteenth ward lying east of the center of Mott Street, that part of the old sixteenth ward lying north of the center of West Twenty-fourth Street and Blackwells, Randalls, and Wards Islands.

MARK EISNER, 1150 Broadway, (27th Street), New York.

Fourteenth District.—The counties of Albany, Clinton, Columbia, Dutchess, Essex, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, Washington, and Westchester, and the old twenty-third and twenty-fourth wards of New York City.

ROSCOE IRWIN, Albany.

Twenty-first District.—The counties of Broome, Cayuga, Chenango, Cortland, Delaware, Franklin, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Schuyler, Seneca, Tioga, Tompkins, and Wayne.

NEIL BREWSTER, Syracuse.

Twenty-eighth District.—The counties of Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genessee, Livingston, Monroe, Niagara, Ontario, Orleans, Steuben, Wyoming, and Yates.

VINCENT H. RIORDAN, Buffalo.

Collection Districts for New York City.

New York City (Greater New York) is embraced within four collection districts; the First, the Second, the Third and the Fourteenth New York.

First District. The Boroughs of Brooklyn, Queens and Richmond are in the First District; Office, Post Office, Brooklyn.

Second District. The Borough of Manhattan (Manhattan Island) itself consists of two collection districts, the Second and the Third. The Second District (Office—Custom House) consists of that portion of Manhattan Borough which is bounded by the East River from the center of Catharine Slip (Pier 26, E. R., four blocks north of Brooklyn Bridge) to the Battery; by the North River from the Battery to the center of West 24th Street (Pier 64, N. R.); and by a line, beginning at the North (Hudson) River, running east along the center of West Twenty-fourth Street to the center of Sixth Avenue, down the center of Sixth Avenue to the center of Fourteenth Street, east along the center of Fourteenth Street to the center of Fourth Avenue, down the center of Fourth Avenue to Cooper Square, around the north and east sides of Cooper Square (i. e., all of Cooper Square is in the Second District) to the east side of the Bowery, down the east side of the Bowery to the center of East Houston Street (i. e., both sides of the Bowery north of East Houston Street are in the Second District), west along the center of East Houston Street to the center of Mott Street, down the center of Mott Street to the center of Canal Street, east along the center of Canal Street to the center of the Bowery, down the center

of the Bowery to the center of Catharine Street (at Division Street), along the center of Catharine Street to Catharine Slip and across the center of Catharine Slip to the East River (Pier 26, E. R.). The Second District includes Governors Island also.

Third District. The Third District (Office, 1150 Broadway, between 26th and 27th Streets) embraces all of the rest of Manhattan Island; that is, all of Manhattan Borough not included within the boundaries of the Second District outlined above, together with Blackwells, Randalls and Wards Islands.

Fourteenth District. The rest of Greater New York, that is all of Bronx Borough, which lies north and east of the Harlem Ship Canal and the Harlem River, is in the Fourteenth District (Office, Albany).

NORTH CAROLINA,

Fourth District.—The counties of Alamance, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Chatham, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Richmond, Robeson, Sampson, Scotland, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson.

JOSIAH W. BAILEY, Raleigh.

Fifth District.—The counties of Alexander, Allegheny, Anson, Ashe, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Cherokee, Clay, Cleveland, Davidson, Davie, Forsyth, Gaston, Graham, Guilford, Haywood, Henderson, Iredell, Jackson, Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Polk, Randolph, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Swain, Transylvania, Union, Watauga, Wilkes, Yadkin, and Yancey.

ALSTON D. WATTS, Statesville.

NORTH AND SOUTH DAKOTA, JAMES COFFEY, Aberdeen, S. Dak.

OHIO,

First District.—The counties of Brown, Butler, Clarke, Clermont, Clinton, Fayette, Greene, Hamilton, Highland, Miami, Montgomery, Preble, and Warren.

ANDREW C. GILLIGAN, Cincinnati.

Tenth District.—The counties of Allen, Auglaize, Champaign, Crawford, Darke, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Logan, Lucas, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca, Shelby, Van Wert, Williams, Wood, and Wyandot.

FRANK B. NILES, Toledo.

Eleventh District.—The counties of Adams, Athens, Coshocton, Delaware, Fairfield, Franklin, Gallia, Guernsey, Hocking, Jackson, Knox, Lawrence, Licking, Madison, Marion, Meigs, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Scioto, Union, Vinton, and Washington.

BERIAH E. WILLIAMSON, Columbus.

Eighteenth District.—The counties of Ashland, Ashtabula, Belmont, Carroll, Columbiana, Cuyahoga, Geauga, Harrison, Holmes, Jefferson, Lake, Lorain, Mahoning, Medina, Monroe, Portage, Richland, Stark, Summitt, Trumbull, Tuscarawas, and Wayne.

HARRY H. WEISS, Cleveland.

OKLAHOMA, HUBERT L. BOLEN, Oklahoma City.

OREGON, MILTON A. MILLER, Portland.

PENNSYLVANIA,

First District.—The counties of Berks, Bucks, Chester, Delaware, Lehigh, Montgomery, Philadelphia, and Schuylkill.

EPHRAIM LEDERER, Philadelphia.

Ninth District.—The counties of Adams, Bedford, Blair, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Mifflin, Perry, Snyder, York.

BENJAMIN F. DAVIS, Lancaster.

Twelfth District.—Bradford, Carbon, Center, Clinton, Columbia, Lackawanna, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Pike, Potter, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming. (Twelfth District re-established May 1, 1915.)

FRED. C. KIRKENDALL, Scranton.

Twenty-Third District.—The counties of Allegheny, Armstrong, Beaver, Butler, Cambria, Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland.

C. GREGG LEWELLYN, Pittsburgh.

PHILIPPINE ISLANDS, JAMES J. RAFFERTY, Manila.

RHODE ISLAND (See Connecticut).

SOUTH CAROLINA, DUNCAN C. HEYWARD, Columbia.

SOUTH DAKOTA (See North and South Dakota).

TENNESSEE, EDWARD B. CRAIG, Nashville.

TEXAS, ALEXANDER S. WALKER, Austin.

UTAH (See Montana).

VERMONT (See New Hampshire).

VIRGINIA,

Second District.—The counties of Amelia, Appomattox, Brunswick, Buckingham, Carolina, Charles City, Chesterfield, Cumberland, Dinwiddie, Elizabeth, City Essex, Fluvanna, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Louisa, Lunenburg, Mathews, Middlesex, Nansemond, New Kent, Norfolk, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Princess Anne, Richmond, Stafford, Southampton, Spottsylvania, Surry, Sussex, Warwick, Westmoreland, and York.

RICHARD C. L. MONCURE, Richmond.

Sixth District.—The counties of Albemarle, Alexandria, Alleghany, Amherst, Augusta, Bath. Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Charlotte, Clarke, Craig, Culpepper, Dickenson, Fairfax, Fauquier, Floyd, Franklin, Frederick, Giles, Grayson, Greene-Halifax, Henry, Highland, Lee, Loudoun, Madison, Mecklenburg, Montgomery, Nelson, Orange, Page, Patrick, Pittsylvania, Prince William, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe.

JAMES S. PERSINGER, Roanoke.

The counties of Accomac and Northampton are in the District of Maryland.

WASHINGTON (Includes Alaska), DAVID J. WILLIAMS, Tacoma.

WEST VIRGINIA, SAMUEL A. HAYS, Parkersburg.

WISCONSIN,

First District.—Counties of Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest Green Lake, Kenosha, Kewaunee, Manitowoc, Marinette, Marquette, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and county of Langlade with exception of the eight townships of said county which were formerly in Lincoln County.

PAUL A. HEMMY, Milwaukee.

Second District.—Counties of Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Douglas, Dunn, Eau Claire, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, St. Croix, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, Wood, and the eight townships in the western part of Langdale County which were formerly in Lincoln County.

BURT WILLIAMS, Madison.

WYOMING (See Colorado).

T. D. AND SPECIAL MATTER FINDER

In these tables are shown the locations within this book, by paragraph numbers of all matters printed herein, that appeared in our 1918 Service.

Any regulation, part of a regulation, letter, or other matter contained in our 1918 Service not found in the subjoined tables was repealed, amended, superseded, or otherwise annulled, or was repeated in a subsequent regulation which has been cited as being the latest ruling.

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38	911
39	912
40	933
41	934
42	788
43	928
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45	948
46	953
47	1014
48	1282
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90	1105
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99	2098
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109	1045
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171	760
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178	992
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611	1490
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612	1403
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613	1404
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618	1711
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627	1491
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640	1504
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641	1505
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643	1564
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745	2510
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Organized in 1892

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15 Exchange Place, Jersey City
Organized 1892

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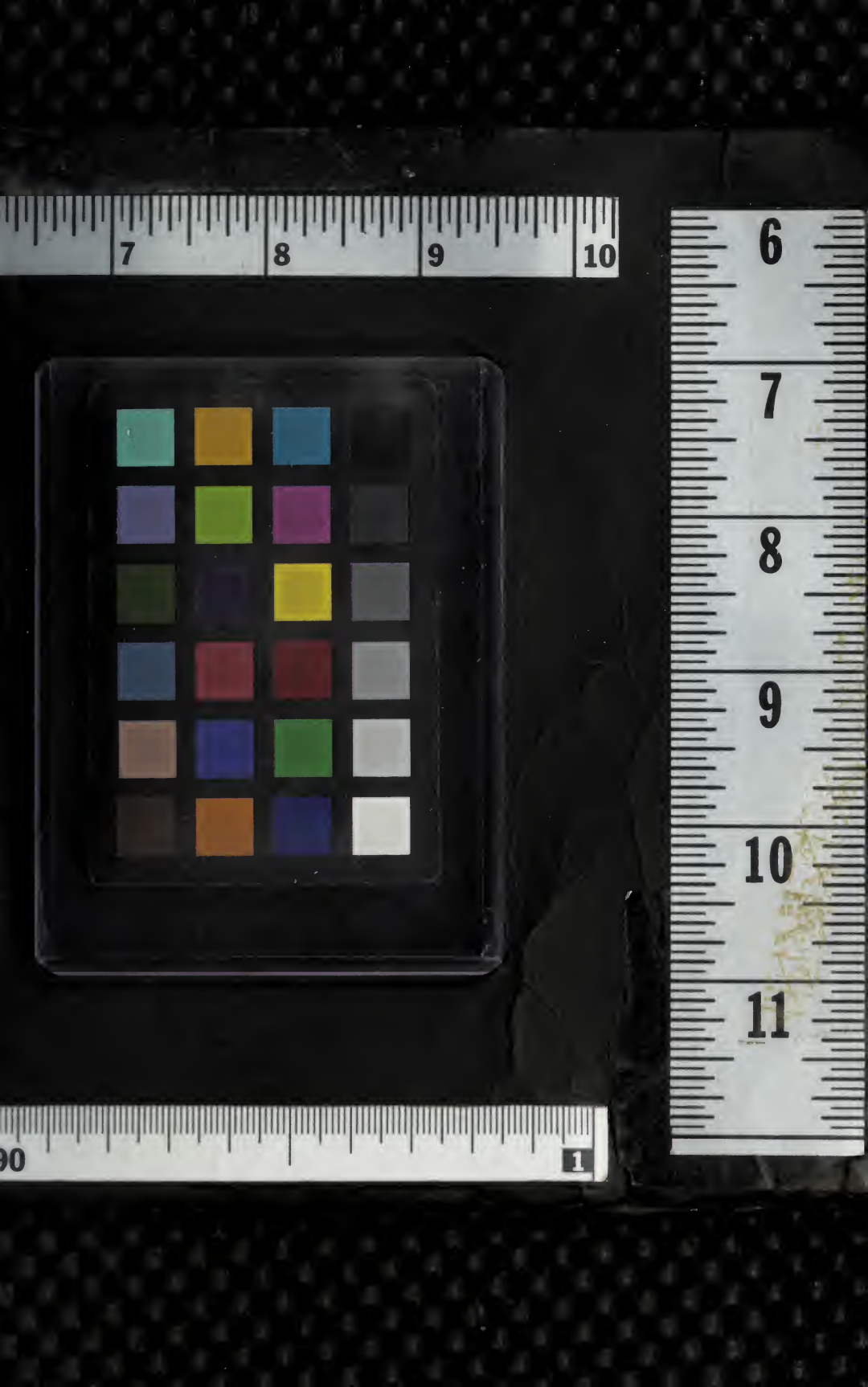

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